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The Effect of Talent Management on Organizational Success: A Comparative Study in the Petroleum Sector in Egypt

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From Knowledge to Wisdom

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Soft Computing Methods for Predicting Environmental Quality: A Case Study of the Zimbabwe Sugar Processing Industry

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Sugarcane growing and processing is associated with environmental degradation and pollution. The impact that sugar processing industries have on the environment affects the ecosystem. Methods of soft computing that is fuzzy logic, neural networks, and genetic algorithms can be adopted for environmental protection, particularly in the developing countries. Soft computing techniques, particularly neural networks and fuzzy logic, have been used to predict and sometimes control air quality. This paper looks at how fuzzy logic can be adopted for predicting air quality. The common environmental impacts associated with sugarcane production are water and air pollution. This paper focuses on air pollution. The major waste streams are identified and the extent of air pollution is predicted by classifying the air quality as poor, ordinary, very good, and excellent. This paper presents a fuzzy rule base that can be used to classify the pollutants and predict the air quality based on the amount of the specific pollutant in the air. The Mamdani fuzzy inference system is used to build the rule base, with the membership functions being non-intersecting and triangular. The adoption of fuzzy logic techniques will help sugar processing industries to be aware of the impact their operations have on the environment.

Keywords: environmental protection, pollution, soft computing, fuzzy logic

Sugarcane growing in Zimbabwe has numerous negative impacts on the environment. Coupled with the local impacts is the pressure being exerted by the international community to improve environmental performance, where organizations are expected to gear toward greener production or engage in environmental best practices that ensure waste minimization at every stage of production. The environmental pressures associated with the production of sugarcane in Zimbabwe are similar to those of other sugar industries around the world. For this reason, perceptions regarding the negative environmental impacts of cane production are also similar all over the world. This paper looks at how soft computing methods of fuzzy logic can be adopted for air quality prediction in the Zimbabwe sugar processing industry. The common environmental impacts associated with sugarcane production are water and air pollution. In this paper, the major waste streams are identified as well as the strategic locations of the equipment for measuring and/or controlling pollution. This

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paper presents interventions for real time monitoring (with the aid of Real World Computing) on waste generation and predicts the quality of the atmosphere in order to warn operations and engineering departments on the necessary measures needed to maintain a clean atmospheric environment. The research outlines how electronic equipment and soft computing, particularly fuzzy logic, can be used to classify and quantify levels of pollution in sugarcane processing. The study also aims at coming up with recommendations for proper methods for segregation, collection, transportation, treatment and disposal of the different forms of generated waste.

Sugarcane Growing and Processing Overview

Sugarcane processing is focused on the production of cane sugar (sucrose) from sugarcane. Other products of the processing include bagasse, molasses, and filter-cake. Bagasse, the residual woody fibre of the cane, is used for several purposes: fuel for the boilers and lime kilns, production of numerous paper and paperboard products and reconstituted panel board, agricultural mulch, and as a raw material for production of chemicals.

Impacts of the Sugarcane Industry on the Environment

Some of the environmental pollution associated with sugarcane growing and processing are:

- (1) Water pollution;
- (2) Air pollution;
- (3) Noise;
- (4) Bad odours (stench due to by products such as molasses);
- (5) Land pollution (spillages and stillage);
- (6) Soil degradation;
- (7) Biodiversity threats.

The following sections discuss water and air pollution further.

Water pollution. Discharge from the mill (the caustic soda, soap, and greases and oils from mill equipment wash waters) is the major contributor to water pollution in sugarcane growing and processing industries. High levels of pollutants in river water systems cause an increase in biological oxygen demand (BOD), chemical oxygen demand (COD), total dissolved solids (TDS), total suspended solids (TSS), and toxic metals such as Cd, Cr, Ni, and Pb, and hence make such water unsuitable for drinking, irrigation and aquatic life (Kanu & Achi, 2011). Herbicides and pesticides regularly have an impact beyond their specific intended target, and affect indigenous plant and animal life (Hay, 2000).

Air pollution. Boiler performance and furnace emissions such as carbon monoxide (CO), nitrogen oxides (NO_x), sulphur oxides (SO_x), unburnt fuel and particulates are of considerable concern to the sugar industry (Rainey, Pennisi, & Joyce, 2004). Sugarcane plantations take advantage of bagasse for use as a boiler fuel. Bagasse is the crushed remaining of sugarcane stalks left after the extraction of juice (Janghathaikul & Gheewala, 2004). Bagasse is normally supplemented with coal for start-up firing. Most of the gaseous emissions are not visible to the naked eye. Particulates (soot) are also released into the atmosphere during steam generation as shown in Figure 1.

In sugarcane plantations, the major areas that contribute to air pollution are cane burning, steam generation and waste incineration. Cane burning (see Figure 2) is a nuisance, it is potentially hazardous, and it impacts negatively on surrounding communities (Hay, 2000).

Vehicle movement to and from the milling points in sugar milling companies is another source of air

pollution through exhaust fumes and dust. Often the growing of sugarcane may require clearing of fields using graders and tractors for tilling the land. During dry periods of the year, these operations lead to significant air pollution (dust). A land clearing operation is shown in Figure 3.



Figure 1. Air pollution due to boiler stack emissions.



Figure 2. Cane burning.



Figure 3. Land and bush clearing operation.

Local legislative Regulations

Various legislative Acts issued through Environmental Management Agency (EMA) recognize sugarcane cultivation as a specific activity that impacts on the environment. This relates particularly to soil and water conservation, atmospheric pollution and practices that might affect the health and safety of labourers. EMA, through the Act, enforces that polluters should “pay to pollute” (Atmospheric Pollution Control Regulations SI 72 of 2009) (Parliament of Zimbabwe, 2000).

For any other sources of pollution, companies can apply for separate licences to pollute to a specific level (that is, a particular band). Table 1 presents “pay to pollute” bands.

Table 1

“Pay to Pollute” Bands

Pollutant	Blue band	Green band	Yellow band	Red band
Particulates (mg/m ³)	< 60	< 90	< 100	< 120
SO ₂ (mg/m ³)	< 30	< 40	< 45	< 50
NO ₂ (mg/m ³)	< 70	< 100	< 130	< 150

External Environmental Issues

International and local environmental pressures recognized as being of the greatest concern in the Zimbabwean sugar industry have been identified, mainly through comments made by outside parties, local community leadership and extension staff within the industry, coupled to the formal environmental audit of the industry as a whole, that is at the ISO 14001 certification level but in the offing has taken place. The general consensus appears to be that environmental standards within the industry are improving, but at a very slow pace. However, there are a few grower groups in the industry that are leading the way with regard to environmental management.

Environmental legislation around the world is developing fast, and is focusing on international conventions and legislation (a case in particular being the Agenda 21) that encompass all aspects of growing, producing and selling the product. The world's most popular definition of sustainable development is "development that meets the needs of the present without compromising the needs of future generations to meet their own needs". Concern for the environment is growing internationally and is affecting the way business is carried out, on the local stage here in Zimbabwe, since we are also part of the global community. There is international consensus to implement principles and rules that halt degradation of the environment and encourage conservation of existing natural resources. Pressure to enforce environmental legislation is growing, with international focus regarding environmental issues being on: air pollution (cane burning), genetically modified organisms, labour issues, fresh water use and contamination, and soil degradation.

Soft Computing Techniques in Prediction Problems

Prediction based on traditional mathematical methods is often found wanting in dealing with non-linear and uncertain systems. Hence, some other replacements such as soft computing methods have been proposed with different advantages and disadvantages. Soft computing has three branches: artificial neural networks, fuzzy logic and genetic algorithms. Previously air quality has been predicted using machine learning models such as decision trees, neural networks and decision trees (Deleawe, Kusznir, Lamb, & Cook, 2010). It is evident that soft computing techniques are moving forward as an impending tool to model a highly intricate system like atmosphere. The atmosphere is a highly complex, dynamic and non-linear system. Soft computing methods are well adapted to solving such systems and fuzzy logic in particular can be applied because of its ability to handle the various linguistic variables associated with environmental quality.

Fuzzy Logic

A fuzzy controller is an artificial decision maker that operates in a closed-loop system in real time. It gathers plant output data $y(t)$, compares it to the reference input $r(t)$, and then decides what the plant input $u(t)$ should be to ensure that the performance objectives are met (Craig, 2011). In fuzzy rule based systems, after modelling, knowledge is presented by If-Then rules. Fuzzy rules consist of two parts: an antecedent part stating conditions on the input variable(s), and a consequent part describing the corresponding values of the output variable(s). Given particular values of the input variables, the degree of fulfillment of each rule is obtained by aggregating the membership degrees of these input values into the respective fuzzy sets (Gallego, Gago, & Landín, 2011). A fuzzy controller can include empirical rules, and that is especially useful in operator controlled plants (Jantzen, 1998).

According to Bevrani (2010), a fuzzy rule can be defined as a conditional statement in the form:

$$\text{If } x \text{ is } A, \text{ then } y \text{ is } B \quad (1)$$

Where x and y are linguistic variables; and A and B are linguistic values determined by fuzzy sets on the universe of discourses X and Y , respectively (Bevrani, 2010). The rule-base holds the knowledge, in the form of a set of rules, of how best to control the system.

Methodology and Results

The major pollutant generators were identified (boilers and incinerators) and focus of sampling and measurement were directed to these. Air quality was assessed and the major findings are presented in Tables 2-6. The equipment used to measure emissions includes online opacimeters and portable automated

ECOM.J2KN flue gas analysers. For each pollutant four samples were taken at each of the identified generators. The results presented in the summary of findings show the averaged air pollution level.

Summary of Findings

The summary of measurement results on CO, SO₂, NO₂, and particulates is presented in this section (see Tables 2-6).

CO levels shown in Table 1 and Figure 4 are way above that for world class performers (normally less than 0.1 ppm). Fuel type and boiler firing practices that lead to incomplete combustion are the main causes of high CO levels.

Table 2

CO Emissions (ppm)

Plant	Actual	Local implication
Boiler 1	160	Not specified
Boiler 2	48	Not specified
Boiler 3	231	Not specified
Boiler 4	478	Not specified
Incinerator 1	14	Not specified
Incinerator 2	14	Not specified

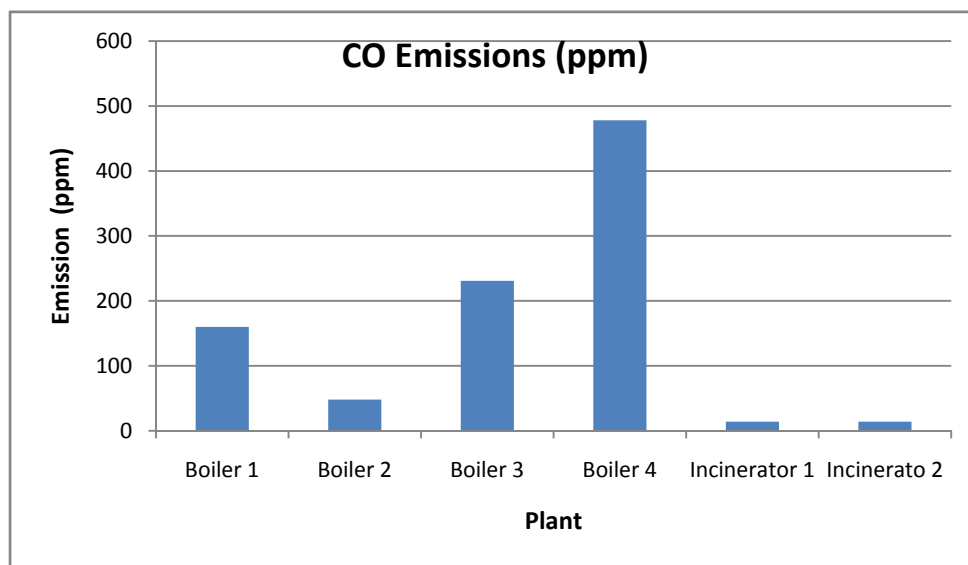


Figure 4. CO emissions (ppm).

Table 3

SO₂ (mg/m³)

Plant	Actual	Local implication
Boiler 1	0	Blue
Boiler 2	0	Blue
Boiler 3	0	Blue
Boiler 4	0	Blue
Incinerator 1	13	Blue
Incinerator 2	15	Blue

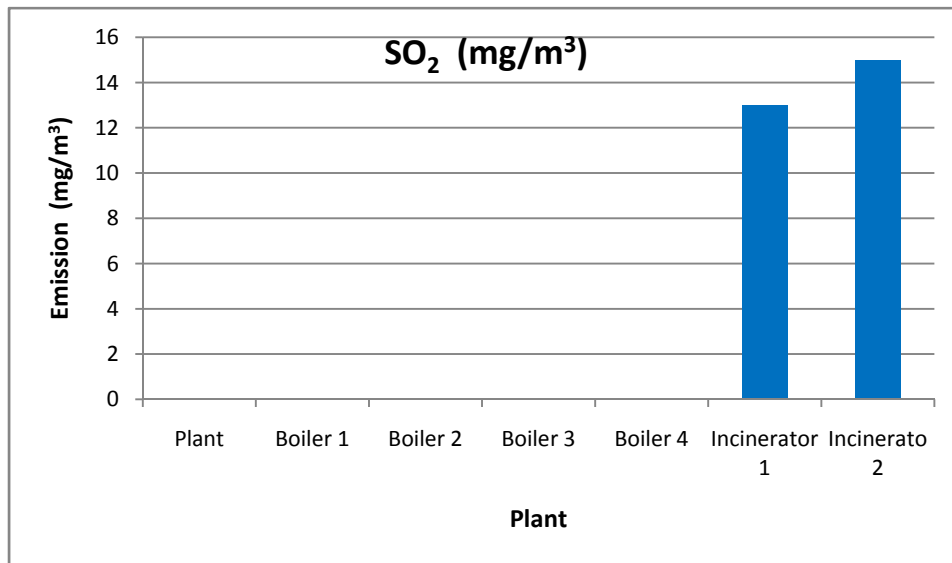


Figure 5. SO₂ emissions (mg/m³).

Table 4

NO₂ (mg/m³)

Plant	Actual	Local implication
Boiler 1	27	Blue
Boiler 2	41	Green
Boiler 3	25	Blue
Boiler 4	33	Blue
Incinerator 1	20	Blue
Incinerator 2	5	Blue

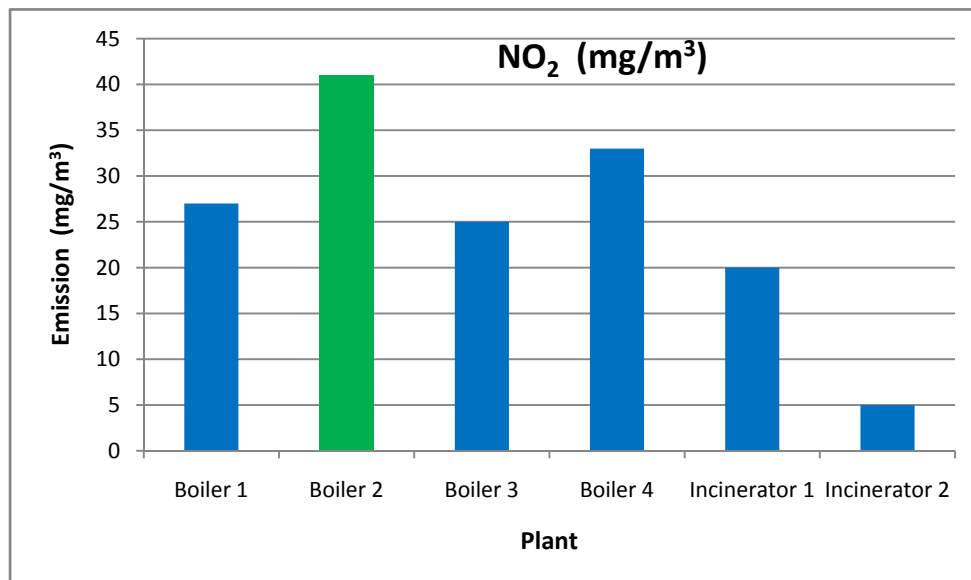
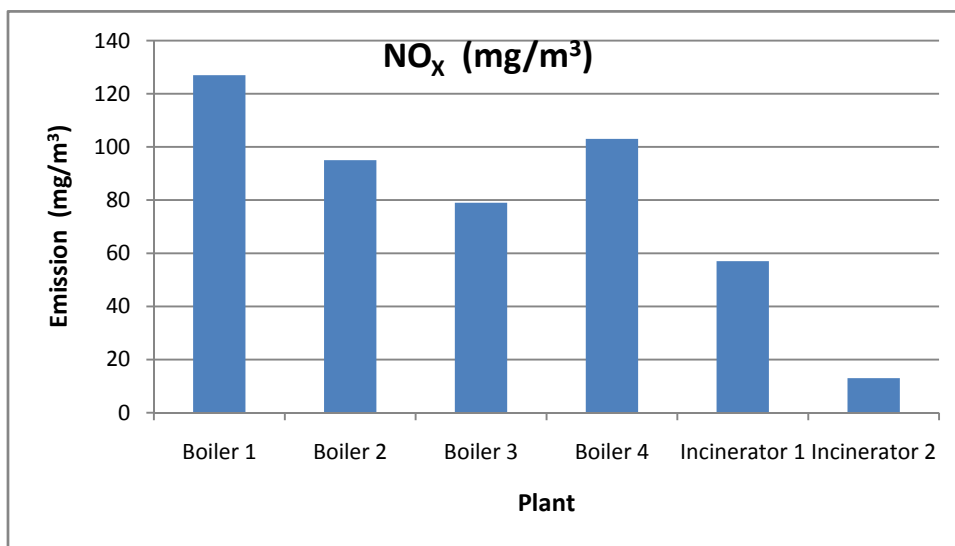


Figure 6. NO₂ emissions (mg/m³).

Table 5

 NO_x (mg/m^3)

Plant	Actual	Local implication
Boiler 1	127	Not specified
Boiler 2	95	Not specified
Boiler 3	79	Not specified
Boiler 4	103	Not specified
Incinerator 1	57	Not specified
Incinerator 2	13	Not specified

Figure 7. NO_x emissions (mg/m^3).

For the results in Tables 3-5 and Figures 5-7, it can be seen that the NO_x and SO_x emissions for the study are quite high by national and international standards (although these emissions are within the national “blue” range). Good boiler firing (fuel type, fuel chemical specifications, combustion characteristics, and air/fuel ratios) practices can be adopted to reduce these emissions.

From the data in Table 6 and Figure 8, it can be seen that the emission levels are high, especially when compared against international standards. The “yellow” range indicates performing way outside Zimbabwean standards. Particulates can be reduced by use of cyclones and wet scrubbers among other pollution control technologies. Operations such as land and bush clearing also contribute to high levels of particulates. Such operations should be carried out during the wet season wherever possible to reduce dust generation.

Table 6

Particulates (mg/m^3)

Plant	Actual	Local implication
Boiler 1	97	Yellow
Boiler 2	52	Blue
Boiler 3	65	Green
Boiler 4	41	Blue
Incinerator 1	14	Blue
Incinerator 2	10	Blue

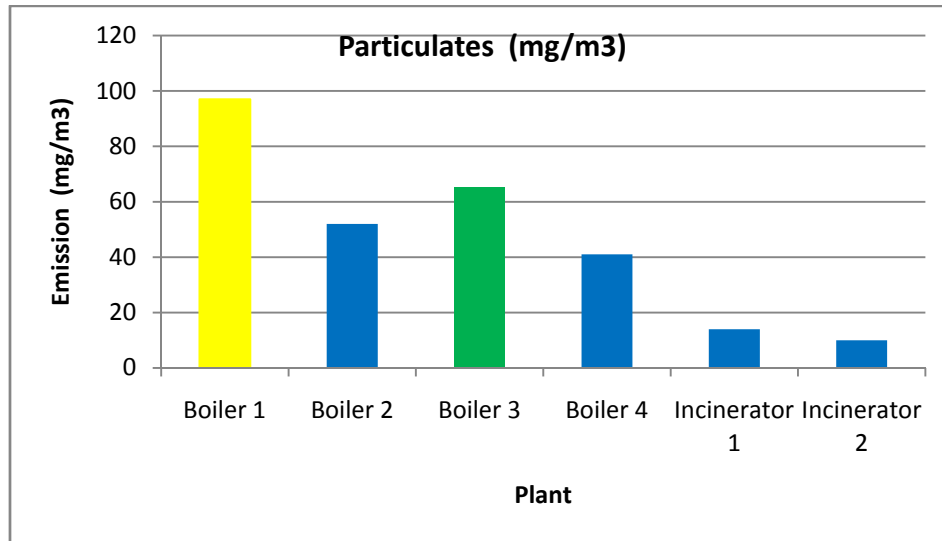


Figure 8. Particulates emission (mg/m³).

Summary of Fuzzy Rule Development for Approximating Air Quality

A set of fuzzy rules was developed using the Mamdani type fuzzy inference system to approximate the ambient air quality. Air quality is categorised into poor, ordinary, very good, and excellent. The technical interventions at each stage will be based on the actual air quality level and these quality levels can be used to inform management or operatives on the required technical interventions. The interventions can then be implemented manually or automatically. The idea is that air quality should be excellent and therefore all technical efforts should result in continuously improving the quality of air from poor to ordinary and eventually to excellent. The developed rules are applied to all the plants and each plant is presented with an independent set of rules. The air quality is measured around specific plant locations using online/offline opacimeters and portable automated ECOM.J2KN flue gas analysers. NO₂ and NO_x emissions have been combined in building the fuzzy rule base:

- (1) If CO is high, SO₂ is high, NO_x is high, or particulates are high, then air quality is poor;
- (2) If CO is low, SO₂ is low, NO_x is low, and particulates are low, then air quality is excellent;
- (3) If CO is moderate, SO₂ is moderate, NO_x is moderate, and particulates are moderate, then air quality is ordinary;
- (4) If CO is moderate, SO₂ is low, NO_x is low, and particulates are low, then air quality is very good;
- (5) If CO is low, SO₂ is moderate, NO_x is low, and particulates are low, then air quality is very good;
- (6) If CO is low, SO₂ is low, NO_x is moderate, and particulates are low, then air quality is very good;
- (7) If CO is low, SO₂ is low, NO_x is low, and particulates are moderate, then air quality is very good;
- (8) If CO is moderate, SO₂ is moderate, NO_x is low, and particulates are moderate, then air quality is ordinary;
- (9) If CO is moderate, SO₂ is low, NO_x is moderate, and particulates are moderate, then air quality is ordinary;
- (10) If CO is low, SO₂ is moderate, NO_x is moderate, and particulates are moderate, then air quality is ordinary;

(11) If CO is moderate, SO₂ is moderate, NO_x is moderate, and particulates are low, then air quality is ordinary;

(12) If CO is moderate, SO₂ is moderate, NO_x is low, and particulates are low, then air quality is ordinary;

(13) If CO is low, SO₂ is low, NO_x is moderate, and particulates are moderate, then air quality is ordinary;

(14) If CO is moderate, SO₂ is low, NO_x is moderate, and particulates are low, then air quality is ordinary;

(15) If CO is moderate, SO₂ is low, NO_x is low, and particulates are moderate, then air quality is ordinary;

(16) If CO is low, SO₂ is moderate, NO_x is low, and particulates are moderate, then air quality is ordinary;

(17) If CO is low, SO₂ is moderate, NO_x is moderate, and particulates are low, then air quality is ordinary.

The illustration in Figure 9 is a schematic of the deduction process.

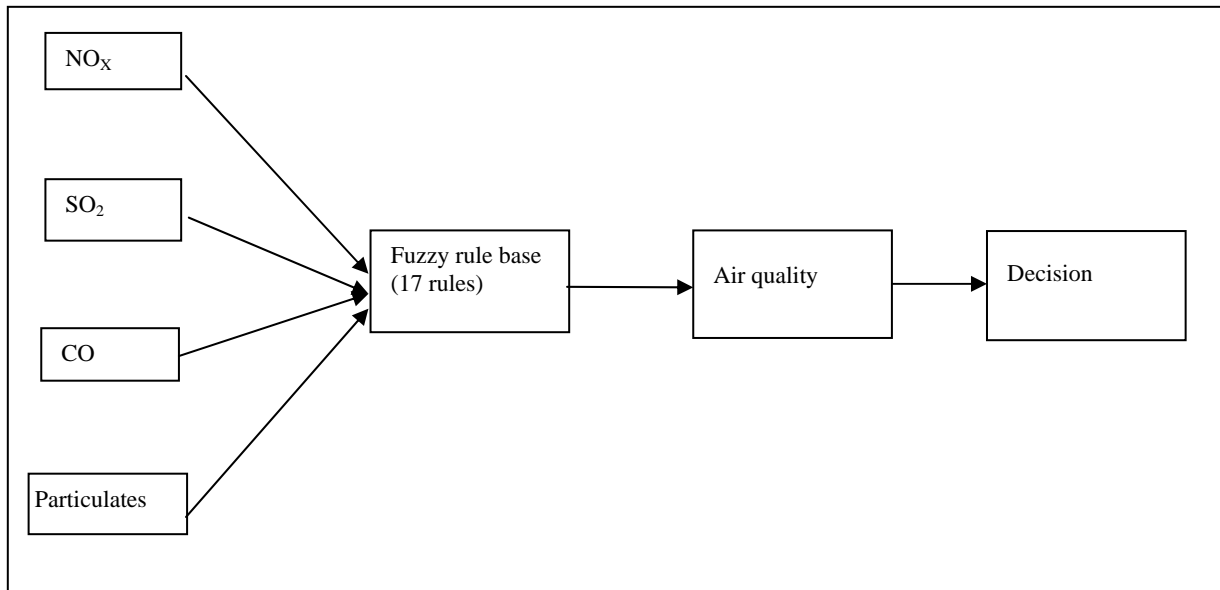


Figure 9. The air quality approximation process.

Input Membership Functions

The inputs shown in Table 7 each have three membership functions. Triangular membership functions were selected for their simplicity. The input membership functions developed are non-intersecting. For purposes of developing accommodative membership functions, the extreme high values of the inputs are deliberately higher than the actual recorded extremes in section 4. The parameters of the triangular membership function (a, b, c) are the lowest values (a) and highest values (b and c), so that the formed triangle is a right angled triangle.

Table 7

Inputs Into the Fuzzy System

Parameter	Low	Moderate	High
NO _x (mg/m ³)	0-45	45-100	100-160
Particulates (mg/m ³)	0-40	40-90	90-150
CO (ppm)	0-10	10-25	25-500
SO ₂ (mg/m ³)	0-10	10-25	25-50

Output Membership Functions

The output of the system is “air quality” to which arbitrary classification values are given as shown in Table 8. The membership functions for the outputs are triangular and non-intersecting. Again, the parameters of the triangular membership function (a, b, c) are the lowest values (a) and highest values (b and c) for each linguistic variable, so that the formed triangle is a right angled triangle.

Table 8

Output of the Fuzzy System

Parameter	Poor	Ordinary	Very good	Excellent
Air quality	1-2	2-4	4-6	6-8

Behaviour of the Air Quality Prediction System

In Figure 10, a rule viewer is presented which shows how the air quality will vary with the inputs fed into the rule base. In this instance, the air quality stands at 5.1 (that is, very good) when the inputs are NO_x : 7.36, Particulates: 19, CO: 17, and SO_2 : 3.59 as shown in the rule viewer in Figure 10.



Figure 10. Rule viewer for predicting air quality.

Generally speaking, the air quality will decrease with an increase at the levels of any of the four inputs (NO_x , Particulates, CO, and SO_2). This is illustrated in Figure 11 (for variation of air quality with NO_x), Figure 12 (for variation of air quality with SO_2) and Figure 13 (for variation of air quality with CO).

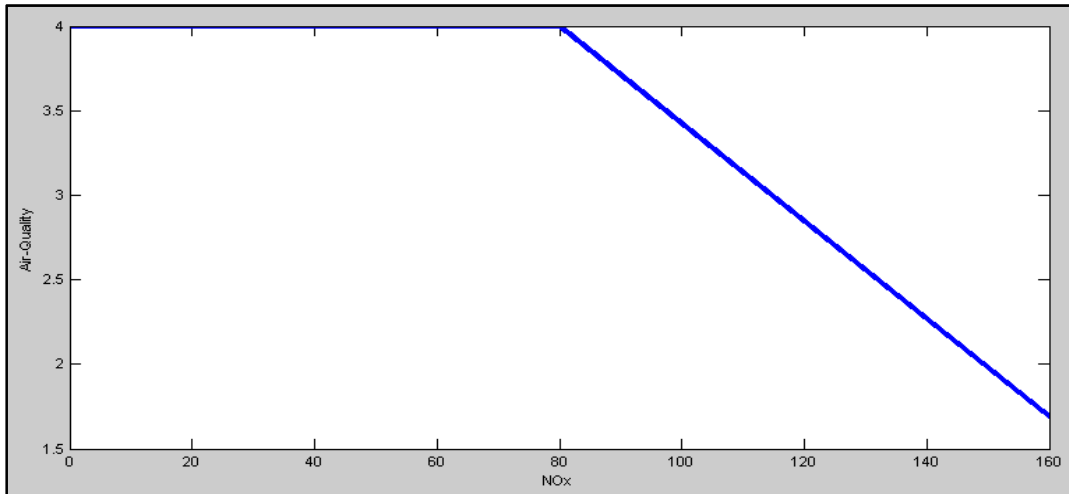


Figure 11. Variation of air quality with NO_x .

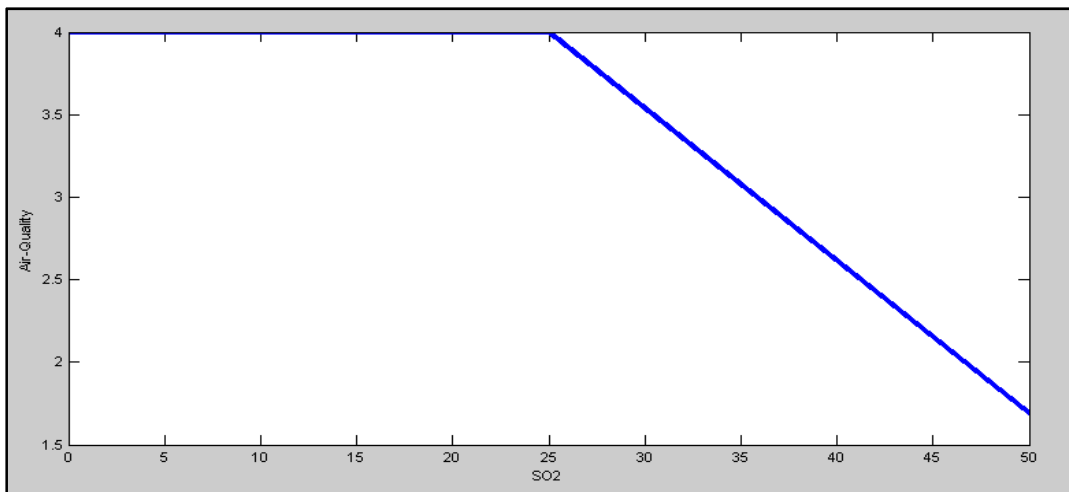


Figure 12. Variation of air quality with SO_2 .

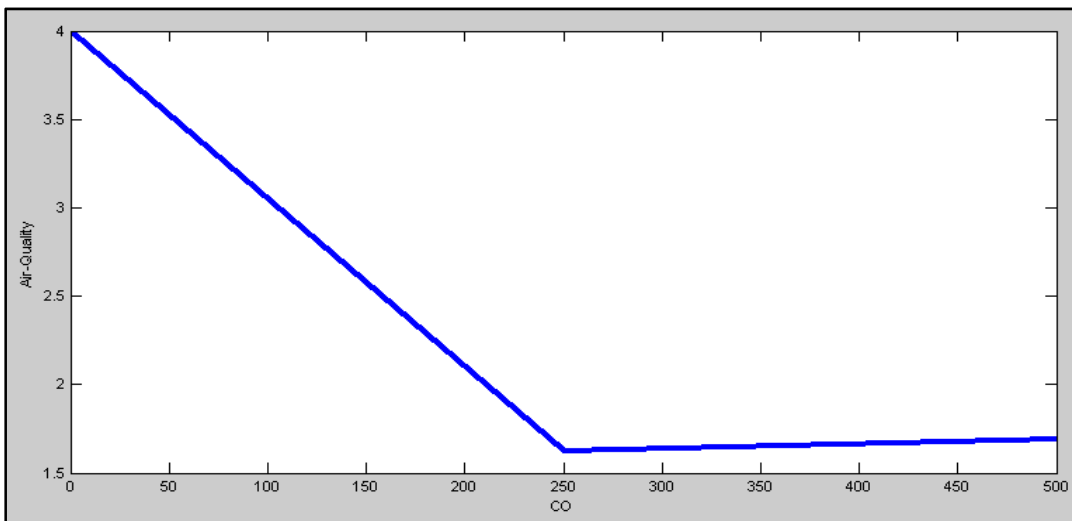


Figure 13. Variation of air quality with CO .

Recommendations

Some recommendations are as follows:

(1) Land and bush clearing operations should be done during the wet (rain) season to minimize generation of dust during such operations;

(2) Stack emissions monitoring should be conducted on a daily basis, and not every three months as required by Environmental Management (Atmospheric Pollution Control) Regulations SI72 of 2009. Inline monitoring equipment such as opacimeters should be installed so that all technical interventions needed are implemented in time;

(3) The emission rate can be reduced by good firing characteristics (feed rate per furnace volume, excess air, reinjection of fly ash), good operating techniques, and proper equipment maintenance;

(4) The Zimbabwe sugar industry needs to embark on a strategy that will promote positive environmental trends in sugarcane and sugar production. The strategy should include the development of environmental expertise within the industry and the development and implementation of an internationally recognized environment management system for sugarcane growing and processing.

Conclusions

The paper presented a fuzzy-based approximation for air quality and discussed the way forward for the Zimbabwe sugarcane growing and processing industry. Further areas of improvement that are based on soft computing are to provide automatic technical intervention once environmental quality levels have been approximated. The Zimbabwe sugar industry's existence depends on nature running smoothly. When managed properly, sugarcane is an environmentally friendly crop in numerous ways. It is essential that the Zimbabwean sugar industry takes note of current developments that are taking place globally in other industries, so that it may start implementing these environmental awareness farming challenges now.

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The Effect of Talent Management on Organizational Success: A Comparative Study in the Petroleum Sector in Egypt

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Multinational companies started introducing and implementing talent management (TM) in the 1990s. It is now popular in the private and non-governmental sector, as well. The idea is to identify talent and manage it in the best way that benefits both the organization and the employee. There is a significant relationship between investments in talents and the ability to achieve and maintain high performance. When organizations manage human capital as a strategic asset, they will have the type of skilled workforce that is the key to achieve sustained business results and ultimately successful outcomes. This study examines the effect of TM on certain organizational outcomes that positively support performance: employee engagement, employee satisfaction, organizational growth and high performance. It conducts a research in a multinational company and another in a public sector company in the petroleum sector in Egypt. When comparing the results of both studies, it is evident that there is a positive and significant relation between TM and positive organizational outcomes that contribute to organizational success.

Keywords: talent management (TM), organizational performance, international companies, public sector companies

Talent management (TM) is a process that has been discussed in the literature since the 1990s (Shaemi, Allemah, & Bajgerani, 2011). It started at the time when the phrase “the war for talent” was introduced in the industry and in research studies. Globalization made this competition for talents expand worldwide. Companies were fighting for the exceptional talents that would benefit their organizations. Not only companies, but also countries started to compete for good talents. For example, China and the United Kingdom would compete for nuclear engineers, while Dubai and California (U.S.) competed for power engineers (Accenture, 2008, p. 6). Thus, eventually and especially since the last decade, it has been a problem and a strategic priority to retain talents in organizations (Shaemi et al., 2011).

The rise of globalization marked a fierce competition between international companies for skilled labor force. Therefore, at the time companies used “outside hiring” when it came to recruiting, and it worked very well in the early 1990s. Outside hiring means that they would hire people from outside the company without even looking at the option of internal recruiting in order to fill a certain need/gap. This policy made the internal employees feel they were not valued enough. In addition, they were taking the talents away from the competitors, which caused many problems. Thus, their main objective was to have head-hunters to steel good talents from their competitors. Companies focused on recruiting outside talent from competitors (Cappelli, 2008). Companies then realized that this process became very expensive; the companies had to incur high costs

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for recruiting, and the companies which were losing their best staff members were suffering financial losses because of this. Therefore, attempts started to be made focusing on retaining their best talent. Retaining the best talent and managing human capital became top priorities in international companies.

Literature Review

TM

Talent is a mix of employees' skills, knowledge, cognitive ability, potential as well as employees' values and work preferences. When people started realizing the importance of talents, the process of TM came up to the surface. Despite this increasing war for talents, there is no concrete definition or a specific model or framework for TM (Burkus & Osula, 2011). The majority of the literature on the subject describes individual experiences of various companies and the solutions they had for TM; these were mainly commonly accepted human resource (HR) practices—mainly human resource development (HRD) and sometimes organizational development (OD) initiatives.

Another view is that the process of traditional replacement planning shifted to “succession planning”, which developed further into talent planning and development, i.e., TM (Heinen & O'Neill, 2004). This is an evolution that took place due to changes in the purpose, the target, the assessment, the outcome, the career path, the implementation, the ownership, and the participation of the process (Heinen & O'Neill, 2004). However, TM is not succession planning, the latter is only part of it.

TM is defined as the process of ensuring that the organization attracts, retains, motivates, and develops the talented people it needs (Cappelli, 2008). It is a set of designed processes that ensure that employees are properly rotated at the jobs available in the organization and that the right person is in the right job at the right time (Cheloha & Swain, 2005; Kesler, 2002; as cited in Shaemi et al., 2011). Talent can be divided into natural talent and acquired talent (Shaemi et al., 2011). TM in organizations should combine both. It should not stop at job rotation and succession planning, but it is also about learning and development. One component of it is to identify potential employees. As explained by Altman (2008), “as the skills shortage bites, keeping hold of your best people is becoming all out war. TM is more than just a buzzword”. A talented individual with high potential will generate better results. This is not easy to achieve. Managers need to find, attain, retain, and manage the individuals who are talented (Davis, 2007). Therefore, TM also relates to employee empowerment (Loftus, 2007).

In order to achieve that, Cappelli (2008) proposed using an internal talent pipeline to manage human capital and he explained that this was similar to how products moved through a supply chain: reducing bottle necks that blocked advancement, speeding up processing time, and improving forecasts to avoid mismatches. Not all talent pipelines are created equal, nor do all talent pipelines operate effectively. There are expected to be cracks, blockages and breaks that prevent the right talent from rising to the top and reaching their own—and the organization's—potential. Thus, Cappelli (2009) approached human capital and its management as a supply chain. He believed that the supply chain and the value chain should be brought together to have the most impact on the TM strategy (Cappelli, 2008). Getting the right person in the right job at the right time is identical to the basic task of supply chain management (Cappelli, 2009). Google is a life example for this approach, for example, its impressive TM pipeline is managed to match its core business: rigorous, intense and scientifically minded. It is aligned with its value proposition (Brooks & Saltzman, 2009).

Cappelli (2008) suggested four principles from supply chain management:

- (1) To balance between internal and external recruiting;
- (2) To reduce the risk in the demand for talent;
- (3) To improve the return on investment in talent;
- (4) To protect this investment by increasing the bond and the commitment to the organization.

Employees are divided into challenging employees, key employees, strategic employees, and unfitted employees. TM works mostly with the key and the strategic employees. It develops and rotates them, enlarges their skills and competencies, so that they are suitable and fitting many jobs in the organization afterwards, when there is a need. The basic assumption is “talented performance is created through deliberate practice” (Burkus & Osula, 2011, p. 6).

Performance in Figure 1 refers to a description of the current achievements or deficiencies compared with the work standards of the job and the agreed upon objectives. Potential refers to the assessment of the likelihood of success of the employee in a more complex, demanding, difficult or unfamiliar assignment which requires different kinds of activities, responsibilities and skills than the one of the current job.

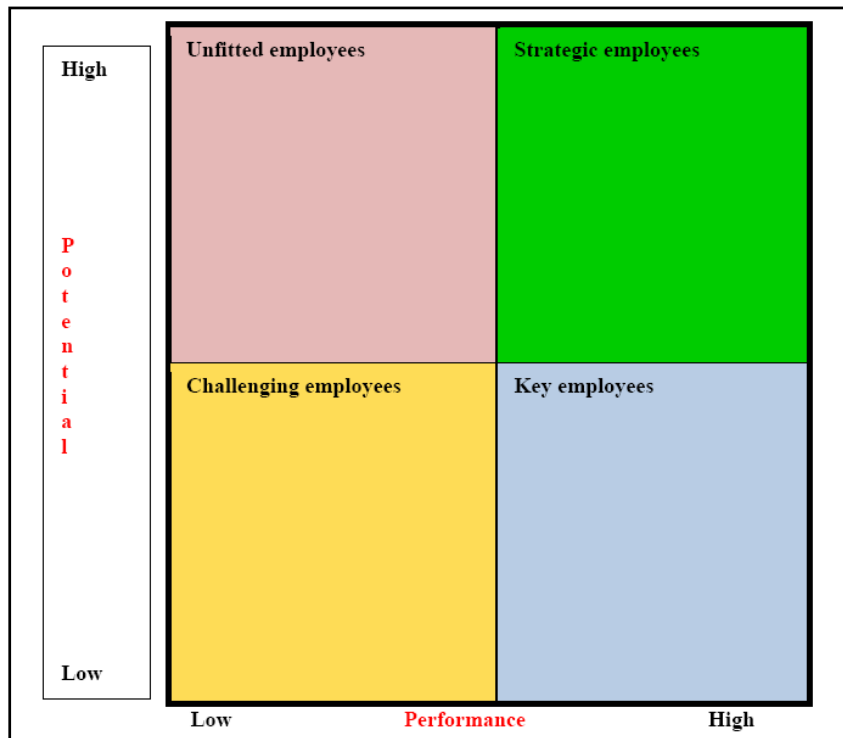


Figure 1. Classifying employees.

TM leads to positive performance at the organizational and the individual levels. “An often-cited study by Mark Huselid shows that a standard deviation increase in high performance TM practices is associated with enormous economic returns” (Huselid, 1995; as cited in Heinen & O’Neill, 2004, p. 67). It also leads to achieving a business’ overall objective, which is making profit (Cappelli, 2008). In addition, it leads to employee engagement and employee satisfaction, which leads to employee commitment and retainment (Lockwood, 2006).

According to Brooks and Saltzman (2009), Heinen and O’Neill (2004), and Loftus (2007), an integrated talent supply chain management had the following positive outcomes:

- (1) Enhance revenues by improving performance;
- (2) Improve talent productivity at lower costs;
- (3) Fine-tune the precision of forecasts and shorten planning cycles;
- (4) Leverage suppliers for greater service and better pricing;
- (5) Improve service quality and produce more technologically advanced service lines for better client value;
- (6) Enhance internal communications, collaboration, and processes for greater employee satisfaction;
- (7) Produce more reliable financial information.

Thus, TM is identified to be one of the most important factors and a key component of sustainable competitive advantage as well as efficiency in any organization (Shaemi et al., 2011). TM is also a wise view to use the talents and competencies of talented people in order to provide the organization's needs and goals (Shaemi et al., 2011). There are, however, two risks in TM that need to be avoided: the cost of mismatch of employees and skills, and the cost of losing the talent after having invested in it (Cappelli, 2009). Therefore, there is a need to develop an appropriate business strategy that takes TM into account by identifying talent, developing it and eventually protecting it.

TM Strategy

There is agreement in the literature that TM is not successful without a clear strategy that is aligned with the strategy of the organization (Cappelli, 2008). "Successful organizations view TM as an ongoing strategic priority" (Heinen & O'Neill, 2004, p. 71). TM Strategy is "a tool to develop an organization against complex, environmental changes by attracting, keeping and training talented people" (Allameh & Ghasem Aghaei, 2008; as cited in Shaemi et al., 2011, p. 229). Successful TM is the key to high performance. But the organizations have to know that it is a long-term commitment not a short one. Therefore, TM has to be integrated in the overall strategy of the company and has to be evident in the HR management goals and objectives. However, organizations need to pay attention to underperformers, as well as they have an effect on attracting and retaining high potentials and on company performance and morale (Heinen & O'Neill, 2004).

Davis (2007) believed that "TM is all about how much better to have a strategy which seeks to recruit, develop, and nurture internal talents that are capable of reaching the highest levels in the organization". He also suggested that TM should take place at all levels and areas of the organization. It is the responsibility of all employees and they need to have a sense of ownership of it. When you have TM, it is like having good quality, it is the responsibility of everyone and you know it once you have it, without explanation from anyone (Northouse, 2001; as cited in I. Wang, Shieh, & F. Wang, 2008).

Thus, organizations need to ensure that TM is a strategic priority that is approached "systematically and holistically in the coming years". By doing so, organizations will put themselves in a position to manage human capital as a strategic asset and have the type of skilled workforce that is the key to achieve sustained business results and ultimately high performance as the industry continues to evolve. Organizations should appreciate their talented employees because they know that they cannot do their jobs effectively without them (Accenture, 2008, p. 17).

A TM strategy can be evaluated through the following components (identified by Sween, 2009; as cited in Shaemi et al., 2011):

- (1) Performance management;

- (2) Employee development;
- (3) Rewards and recognition;
- (4) Communication;
- (5) Open climate and culture.

If the above is taking place effectively in the organization, this means that it is applying a TM strategy. These are all support pillars for TM; and they confirm the application of TM. However, the initial point is that it is acknowledged and appreciated and that it is a strategic goal.

Some of the processes associated with TM are recruiting, selection, performance management, career development, leadership development, succession planning, career planning, recognition and reward (Heinen & O'Neill, 2004). The problem is that sometimes organizations have all these processes but they are disconnected from each other, and they have different owners (Heinen & O'Neill, 2004). If TM processes are not well integrated, they will not operate as an effective system and thus will not achieve the high performance anticipated (Heinen & O'Neill, 2004).

There are TM agreed upon steps based on the literature with special emphasis on Cappelli's value and supply chain proposal:

- (A) Review the business strategy;
- (B) Identify talent requirements;
- (C) Determine talent gaps/process gaps;
- (D) Identify talent priorities;
- (E) Manage talent:
 - (1) A socialization program;
 - (2) An annual talent review: (a) individual develops career plan; (b) immediate manager reviews and provides feedback on plan; (c) business unit reviews the reports and identifies high potentials; and (d) CEO reviews the reports, the business unit talent plans, and list and program of high potentials;
 - (3) Formal development programmes: a learning centre;
 - (4) Informal networking and developmental opportunities: a leadership training programme.

Conducting these steps and aligning them to the needs/situation of the individual organization leads to an effective TM tailored to this particular organization.

TM in the Oil Sector

There is a worldwide call for "attracting and retaining skilled workers" as a priority to the oil industry success (Orr & McVerry, 2007). This is because knowledge, not assets, will be the source of future value growth in this particular sector; and this sector is already lacking young professionals with the required knowledge and experience (Orr & McVerry, 2007). It is expected that oil companies will face talent challenges soon due to the low supply and high demand for qualified professionals (Orr & McVerry, 2007). Oil companies usually provide good compensation packages. The problem is more with the area of personal development where there is not enough focus and attention paid to this area, while it is of high importance to the professionals in the field. This is one of the major reasons why many young people do not choose this career path (Orr & McVerry, 2007). The reasons for the problem at the international level are summarized as:

- (1) An aging workforce, where the majority are in their late 40s and thus retiring soon;
- (2) Fewer experienced candidates, and not enough training for younger employees and reliance on the old

ones with experience;

(3) Industry globalization, where international companies are trying to rely more on local talents to reduce costs;

(4) Difficulty attracting entry-level talent, where the remote locations and the reputation of the difficult and inappropriate living conditions on the sites play a major role.

However, there are now many college graduates with the right knowledge and qualifications, but they are not attracted to these companies and prefer different careers, even if not in their specializations (Orr & McVerry, 2007). What the oil and gas companies lack most is an integrated TM strategy.

Organizational Performance

There are financial and non-financial measurements of organizational performance. Within the financial performance measures, there are also market share measures. Previous “studies have shown how non-financial performance measures can be best combined with financial performance measures to obtain the best measurement of performance in a competitive environment” (Abu-Jarad, Yusof, & Nikbin, 2010). Some studies add to this other measures like external customer satisfaction (Deshpande, 2012) and others of internal customer satisfaction and attitudes, i.e., those of the employee (Abu-Jarad et al., 2010; Rubera & Kirca, 2012). The latter includes employee satisfaction, employee engagement, and employee commitment.

Therefore, this study attempts to examine the oil sector in Egypt and will focus on investigating the relationship between TM and organization outputs in this sector in Egypt by attempting to answer the following questions:

- (1) To what extent do oil companies in Egypt adopt TM strategies?
- (2) Does a TM strategy lead to positive organizational outputs in the oil sector in Egypt?
- (3) Is there a difference between companies adopting a TM strategy and others which are not in terms of organizational output?

Based on the literature, the following is the conceptual framework which is examined in the study (see Figure 2).

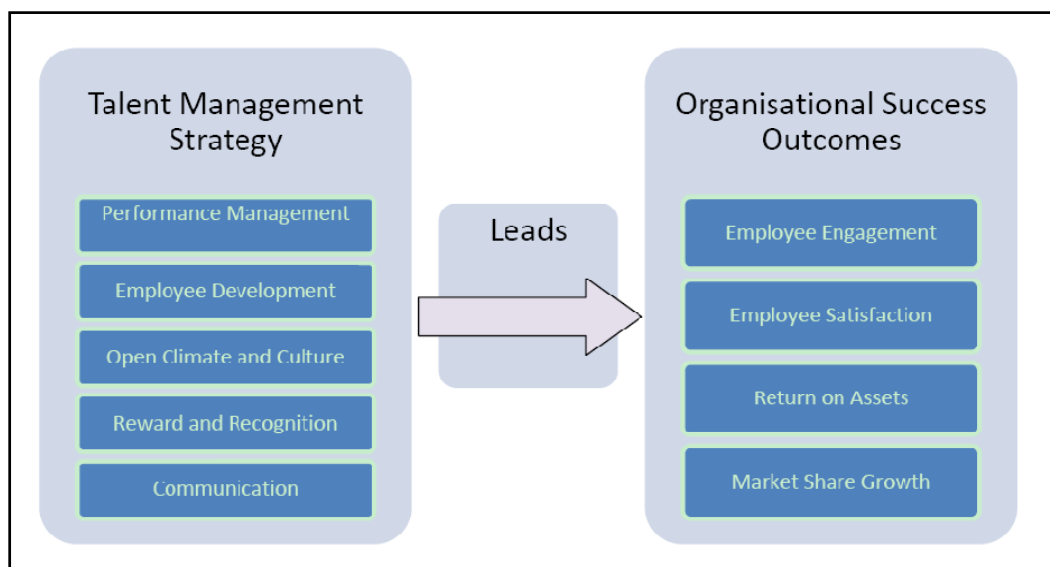


Figure 2. The conceptual model.

The Hypothesis

H₁: Implementing a TM strategy leads to positive organizational outcomes.

Empirical Study

The study tried to evaluate the TM strategy in two oil sector companies in Egypt. One company—called company A—is an international company operating in Egypt. The other—called company B—is an Egyptian public sector company.

The surveys (see the Appendix) were distributed to 200 employees in both companies. The survey consists of two parts. Part one focused on the independent variables and evaluated whether the company had a TM strategy in place. The questions were straightforward and asked about whether there is performance management, employee development, rewards and recognition, communication and an open climate and culture in the organization or not. The aim was to identify if there is a TM strategy in the organization or not. Part two was concerned with two of the dependent variables and tried to evaluate to what extent employees were satisfied and to what extent they were engaged. The satisfaction of employees was measured using the Job Satisfaction Survey (Kardam & Rangnekar, 2012). The level of job engagement was identified using the Utrecht Work Engagement Scale (Chaudhary, 2012). Both are validated measures used in various academic studies. The last two outcomes, return on assets, and market share growth were identified from the companies' records.

The response rate was high (64% in company A and 78% in company B). The surveys were analyzed using Statistical Package for Social Sciences (SPSS) version 19. The results were discussed with two top managers in both companies (assistants to the CEO of both companies). The statistical analysis showed that TM was evident in company A, where all five independent variables were positive. Company A was identified as a top performer worldwide. It was a multinational company, ranking as number 4 in the field worldwide. Company B, the public sector company, had decreasing returns over the last five years. In addition, it scored lower than company A in performance management, employee development, communication, open climate and culture, reward and recognition. Actually the last two variables were scored very low on the Lickert scale of the survey. It was obvious, when it comes to organizational performance, company A was in a much better position. Company A had also an increasing number of projects, had a diverse portfolio, had increasing assets, and had state of the art technology. In general, both companies had a strong history with high and impressive technical experiences. However, when it comes to the present, the difference was considerable, where company B was in obvious disadvantage in terms of organizational outputs. It scored significantly low in the areas of employee engagement and employee satisfaction. Therefore, when it comes to these two companies, it was statistically proven that there was a positive relationship between TM and organizational success outcomes (see Table 1).

This analysis agrees with the results of the literature. This in itself gives an indication that in Egypt, as in countries in the West, there is a need for effective TM. It is obvious that TM is one key to obtaining positive organizational outcomes in Egypt, like elsewhere in the world.

Thus, the hypothesis for this study is accepted. Implementing a TM strategy leads to positive organizational outcomes.

So, what should companies in this sector, in particular and in organizations in Egypt and the Arab World do with respect to TM? They should simply apply it. They should use the best practices in the field, but tailor them to the needs/situation of each individual company.

The following model encompasses the results of the literature which are confirmed by the findings of the empirical study (see Figure 3).

Table 1

Correlation Significance of TM Variables and Organizational Outcomes

Relation	P	Comment
Correlation between TM and employee engagement	0.000**	Significant
Correlation between TM and employee satisfaction	0.042*	Significant
Correlation between TM and organizational performance	0.013*	Significant
Correlation between TM and organizational growth	0.025*	Significant

Notes. * Correlation is significant at the 0.05 level (2-tailed); ** Correlation is significant at the 0.01 level (2-tailed).



Figure 3. The proposed model of TM in organizations.

Conclusions

Managing talent is difficult and time-consuming, but very rewarding; without it investments will not earn the desired returns and the best business strategies can fail. For TM initiatives to be effective, organizations need formal processes with buy-in from all levels and departments of the organization. This is not only an HRM initiative. It is an organizational strategy.

Limitations of the Study

The study only focused on two companies in Egypt; future studies should cover more companies and examine if the hypothesis is still accepted.

Although the response rate of the survey is high, the sample size should have equaled the population size to make the results more valid and reliable.

Practical Implications and Recommendations

Some implications and recommendations are as follows:

(1) In the face of the coming talent crisis, all oil and gas companies will likely need to adjust their TM strategies to support shifting business requirements and counteract increased competition for their most valuable employees (Orr & McVerry, 2007);

(2) However, the most powerful TM practices are firm-specific. They respond to the organization's unique and personal human capital context (Heinen & O'Neill, 2004);

(3) Like a well-designed manufacturing supply chain, a comprehensive approach to managing the talent supply chain can reduce costs, add product value, extend resources, accelerate time to market, and solidify employee and customer loyalty;

(4) Instead of focusing on discrete tasks, such as hiring talent and staffing, TM is more about leveraging a holistic, integrated talent supply chain that gives the organization the ability to identify, recruit, retain, and optimize effectively the talent needed to satisfy the various needs of the organization at all times.

(5) The last advice to organizations in the oil sector in Egypt: In order to achieve positive performance, it is important to become a "talent magnet", as talent attracts talent.

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Appendix

Table A1

Survey

	1	2	3	4	5	6	7
I feel I am being paid a fair amount for the work I do.							
There really is too little chance for promotion on my job.							
My supervisor is unfair to me.							
The benefit package we have is equitable.							
There are few rewards for those who work here.							
My efforts to do a good job are seldom blocked by red tape.							
I like the people I work with.							
I sometimes feel my job is meaningless.							
Communications seem good within this organization.							
At my work, I feel that I am bursting with energy.							
I find the work that I do full of meaning and purpose.							
Time flies when I'm working.							
At my job, I feel strong and vigorous.							
I am enthusiastic about my job.							
When I am working, I forget everything else around me.							
When I get up in the morning, I feel like going to work.							
I feel happy when I am working intensely.							
I am proud of the work that I do.							
I am immersed in my work.							
I can continue working for very long periods at a time.							
To me, my job is challenging.							
I get carried away when I'm working.							
At my job, I am very resilient, mentally.							
It is difficult to detach myself from my job.							
There is a clear performance management framework in the company.							
There are employee development and training policies in the company.							
The company is characterized by an open culture and climate.							
The reward and recognition system is clear and transparent.							
There are clear and open communication channels between employees in the company.							

Notes. 1 is "do not agree"; 7 is "highly agree".

From Fantasy to Reality—Learning From Seven Years of Lean Implementation

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The purpose of this paper is to address the question of how manager's views on Lean in terms of "toolbox Lean" or "Lean thinking" impact their view of the implementation process. This paper is based on a case study at a globally established Swedish manufacturing company. Findings show that managers' definitions of Lean have evolved from a "toolbox" view toward more of a "Lean thinking" view during the implementation process, due to the learning taking place in the organization during the implementation. As the understanding of Lean develops, new and unforeseen deviations or needs may be identified. This in turn affects the managers' views on the implementation process and perceived needs in regard to Lean development. The study also shows that fragmented development of an organization, such as production units developing individually without support from middle management or human resources (HR) may impede Lean development efforts. Lean implementation and development require system wide change in order to be sustainable, which primarily concerns the management system and management approach but also all support functions within an organization. The use of external consultants in selected parts of an organization, thereby by-passing management levels and support functions may generate conflicting priorities and tension within an organization. The paper contributes to a deeper understanding regarding the learning process related to Lean implementations and to the aspects of people development and leadership required for sustainable Lean development.

Keywords: Lean management, Lean implementation, human resource development

"Lean" programs aimed at waste elimination and improvement, with Toyota as a model, engage companies throughout the world. Transformations of this type can be particularly difficult, because often top management works with internal or external consultants to change the operational "bottom" parts of an organization and then (indirectly) ask middle management and support functions such as human resources (HR) to adapt by assuming new roles and responsibilities.

Many companies around the world have tried to imitate Toyota Production System (TPS), often under the "Lean label", but very few have been successful (Spear & Bowen, 1999, p. 97). As Liker and Hoseus (2010) explained, the culture of the Toyota Way was deeply rooted in the company philosophy and the core principles of respect for people and continuous improvement. It has been suggested that the respect for people principle

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often is a missed topic by top managers trying to implement Lean (Emiliani, 2006). People development has been seen as a key success factor by Toyota leaders ever since the founding of the company (Liker & Hoseus, 2008). At Toyota people development is considered as a key factor for competitive competency which makes the HR department as a key player and gives human resources management (HRM) a very important role in developing people working in operations. According to Liker and Hoseus (2010), HRM was vital because human competency was the only competitive resource that cannot be copied. At Toyota, HR is one of the most important and powerful departments operated by managers typically rotated in to positions with a background in production management and production control, who thus understand the company's core value-adding processes. The organizational supporting process for policy deployment and people development represented by HR at Toyota goes far beyond acting as an accounting system for handling people, with computer systems operators that can be outsourced (Liker & Hoseus, 2010).

Based on the assumption that people are the most important resource and need to be developed, challenged and nurtured, leadership emerges as a critical factor. Rother (2010) argued that the Toyota leadership model rest on basic assumptions that differed from those found in many traditional organizations and can be said to be characterised by developing people through mentoring and coaching by leaders taking an active part in problem solving and role modeling (see also Liker & Hoseus, 2008). Managers thus have the important responsibility of providing leadership in a Lean organization. Emiliani (2007, p. 16) stated that "the primary job of managers is to provide leadership to help people do a better job". An interesting question this raises is whether organizations striving to implement or develop a Lean way of working share beliefs similar to those of Toyota about people development based on leadership and HRM, and whether they act according to those beliefs.

Contemporary literature appears to give no clear definition of the Lean concept. Opinions clearly differ regarding which characteristics the concept should be based on. TPS in the shape that takes today was initially influenced by western industrial management practice such as Training Within Industry (TWI) and the Ford system. Krafcik (1988, p. 42) argued that many of Ford's principles in their purest forms were still valid and formed the basis of what we today know as the TPS. Elements of these systems were integrated in a new environment by people like Taiichi Ohno, Eiji Toyoda and Shigeo Shingo, thus creating a hybrid (Holweg, 2007, p. 422; Fujimoto, 1999). The major drivers within TPS can be described as the dual objectives of production efficiency by consistently and thoroughly eliminating waste and the equally important respect for humanity. It is stated by Hines, Holweg, and Rich (2004) that Lean has evolved considerable over time, and Pettersen (2009, p. 39) stated that "Lean production is a translated version of the TPS and Lean production has itself been translated into many different versions". Two main traditions of Lean are indicated by Pettersen (2009, p. 132) as being "toolbox Lean" and "Lean thinking".

Often when companies initiate a Lean implementation, the assumption is that with the right tools and trained "experts", they will improve business performance in a relatively short period of time. This assumption usually leads to the implementation of selected tools that are "borrowed" from the TPS, i.e., not developed based on existing needs within the own organization. The implementation of selected tools (toolbox Lean) is however not considered to be sufficient in order to achieve a sustainable Lean way of working (Sugimori, Kusunoki, Cho, & Uchikawa, 1977; Emiliani, 2006; Liker & Hoseus, 2010). Leaders at Toyota have, in clear contrast to this assumption, since the beginning of their operations considered investment in people as the key to their success. The assumption at Toyota is described as careful selection and development of people will over time continuously improve processes and, although time consuming, lead to competitive strength. This

indicates that the core of the Toyota way is about culture, a culture based on a company philosophy and with principles guiding people's way of thinking and behaving (Lean thinking). The differences in assumptions between "toolbox Lean" and "Lean thinking" lead to differing views regarding how to manage and develop people within the organization.

The purpose of this paper is to address the question of how manager's view on Lean as "toolbox Lean" or "Lean thinking" impact their view of the implementation process as a project with a time limit or as an initiation of an on-going developmental process. The intention is to increase understanding about the relationship between how Lean production is defined and implemented.

Theoretical Framework

Beer, Voelpel, Leibold, and Tekie (2005, p. 449) described strategy implementation as a fluctuating process and stated that:

Plans on how to achieve strategic objectives regularly change to reflect progress and the shifts in events that take place both internal and external to the organization. Thus the strategic process becomes an ongoing one, continuously updated in response to changes in the environment.

Beer et al. (2005) claimed that strategy formulation accounts for only 10% of success, while implementation accounts for the other 90%. It is during the implementation process that strategy is adapted, molded, and changed to fit the organizations specific circumstances. The barriers that obstruct the change process and the ability to implement change are presented by Beer et al. (2005, p. 450) in four themes:

- (1) Unhealthy power and politics from overriding personal interests and leading ineffective resource allocation;
- (2) Lack of organizational purpose and commitment shown by weak/inefficient communication and lack of involvement;
- (3) Resistance to change evidenced by defensive routines and organizational silence;
- (4) Preventing organizational learning (old mental models and a lack of honest feedback and communication).

These barriers generate symptoms within the organization such as unclear strategy and/or conflicting priorities. They also impact the effectiveness of the top management teams, the leadership styles and skills within the organization, the coordination across functions and the vertical communication (Beer et al., 2005, p. 452). Vertical communication as a prerequisite for awareness regarding obstacles or needs within an organization, i.e., factors for emergent strategy is addressed by Kotter and Schlesinger (2008, p. 5):

Managers who initiate change often assume both that they have all the relevant information required to conduct an adequate organization analysis and that those who will be affected by the change have the same facts, when neither assumption is correct. In either case, the difference in information that groups work with often leads to difference in analyses, which in turn can lead to resistance.

The perspective of a strategic process as something on-going and continuously updated is also given by Mintzberg and Waters (1985), who compared intended strategy with realised strategy, allowing for distinction between "deliberate" strategies that are realised as intended and "emergent" strategies, patterns or consistencies realised despite, or in the absence of intentions. "Emergent strategy itself implies learning what works—taking one action at a time in search for that viable pattern or consistency. It is important to remember that emergent

strategy means, not chaos, but, in essence, unintended order” (Mintzberg & Waters, 1985, p. 271).

Mintzberg and Waters (1985) argued that the conception of strategy as something leaders of an organization plan to do in the future and the tendency thereby to treat strategy formation as an analytical process for establishing long-range goals and action plans for an organization, as one of formulation followed by implementation, is seriously limited. They defined strategy as “a pattern in a stream of decisions”, stating that this definition was developed to operationalize the concept of strategy, namely to provide a tangible basis on which to conduct research into how it forms in organizations (Mintzberg & Waters, 1985).

There are similarities between emergent strategies as described by Mintzberg and Waters (1985) and what Rother (2010, p. 8) described as Toyota's approach to continuous improvement:

The way from where we are to where we want to be next is a grey zone full of unforeseeable obstacles, problems, and issues that we can only discover along the way. The best we can do is to know the approach, the means, we can utilize for dealing with the unclear path to a new desired condition, not what the content and steps of our actions-the solutions-will be.

Rother (2010) meant that we made plans, but as we were not able to foresee the future, these plans often had to be changed to fit the reality. Any step taken engenders reactions from the system and due to interconnectedness, we are not able to predict those reactions. What we are actually doing with a plan is making a prediction, and despite our best efforts we will not be able to avoid planning errors. Obstacles, unforeseen problems, abnormalities and false assumptions will appear as we work to move forward.

On the topic of development and continuous improvement, Liker and Meier (2007, p. xxiii) quoted Kato's stating that it was not possible to separate people development from production development and succeed in the long run. A statement that seems logical since the Toyota DNA is modeled as two intertwined streams: the production value stream and the human value stream (Liker & Hoseus, 2008). The importance of the soft or human side is to be found by Liker and Meier (2007) who stated that the technical side, TPS, is designed to identify and highlight problems while the human side, Toyota Human System, is designed to engage people who are willing and able to solve the problems. The two sides are also presented as two pillars in the Lean house, continuous improvement and respect for people (Liker & Hoseus, 2008).

Osono, Norihiko, and Takeuchi (2008) also gave a clear statement about the importance of having the two sides, the technical and the human, complementing each other; they wrote that after six years of research and more than 220 interviews at Toyota, they came to understand how Toyota combined the hard and the soft sides and their focus was on the human being as the centre of production and consumption that has made Toyota successful.

Rother (2010) argued that the most important factors behind Toyota's success were not production techniques or principles but the skills and actions of all the people working in the organization. He saw this, the issue of human behaviours and the subject of managing people, as the primary differentiator between Toyota and other organizations. Perhaps the importance of people and people development is best spelled out in the Toyota document entitled *Human Resources Development* (Toyota, 2003): “Because people make our automobiles, nothing gets started until we train and educate our people”.

Methodology

This paper is based on a case study at a globally established Swedish manufacturing company. The company is divided into several independent strategic product areas which in turn contain several production

units. The total number of employees exceeded 8,000 at the time of the study. The study had a multilevel, vertical perspective covering the company's five hierarchical management levels, from president of the company to first line managers at the shop floor. Out of six product areas, two were focused on: the initial production step delivering raw materials to the other product areas and the one with the greatest number of employees. The study covered the president of the company, the two product area vice presidents, three production unit managers, three production managers and 11 first line managers. Data were collected through individual semi-structured interviews with 20 managers and covered all hierarchical levels. Analysis was conducted by comparing and clustering theme titles emerging from the transcribed material and by supporting narrative arguments with verbatim extracts from transcripts to support the case in a process influenced by interpretative phenomenological analysis (IPA). IPA is a qualitative research approach originating in psychology but increasingly used in human, social and health sciences (Smith, Flowers, & Larkin, 2009), which attempts to explore personal experience and is concerned with an individual's personal perception of an object or event. The results were finally structured into three themes: (1) the managers' view on Lean; (2) the managers' view on the implementation process; and (3) the relationship between how Lean production is defined and implemented. Furthermore, the analysis resulted in the structuring of the five hierarchical levels into three management levels: top managers, middle managers, and shop floor managers.

The study strives for a contextual understanding regarding managers' interpretations of Lean and resulting actions. Thus the quality and generalization of the study are restricted by the low numbers of participants. Organizational size and the studies' partial coverage of the organization may limit the results' validity to the parts of the organization that were in scope and to larger organizations. Despite this, the study provides insight regarding the learning process connected to a Lean implementation and that alterations of perspectives and needs may take place during such a process.

The Company and Their Lean Journey

The company's Lean journey started in 2004, seven years before the study, initiated by the company's president due to perceived needs for improvements regarding delivery precision, quality, utilization of competence and resources and profitability. Initially an international consulting agency was hired to train a number of designated change agents within the company. This was done by running 16-week "transformation pilots" in selected production parts of the company. As Lean at this time was seen as a set of tools for increased profitability to be gained by higher productivity, shorter lead times and higher and more stable quality, focus for the transformations was on production, leaving out support functions.

Within the line organization, middle managers were also left out of the implementation and development activities. When the consulting firm finished the job and the internal change agents took control over the Lean implementation, they did it from a position outside the line organization. This resulted in "bypassing" the line organization's middle management as shown in Figure 1.

The bypassing resulted in a lack of involvement and perceived ownership amongst managers and supervisors within the line organization. Lack of involvement and ownership impacted the dialogue and support between management levels in the organization negatively. The lack of dialogue resulted in an unclear definition of Lean within the organization, with managers at different levels not knowing each other's perspective on the topic. A shared vision of what a future Lean organization would look like was lacking. As a result, the organization became fragmented with regard to Lean implementation due to lack of a uniform and

clear shared picture of Lean, its implications and purpose.

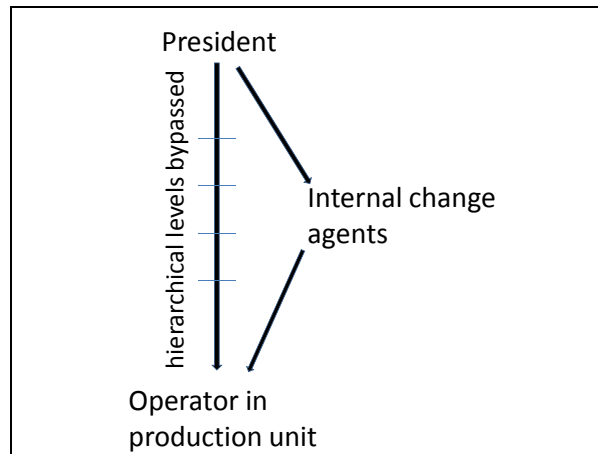


Figure 1. The bypassing of the line organization.

From Fantasy to Reality

As work with the Lean implementation continued and unpredicted needs surfaced, it became increasingly clear that the difficulties in implementing Lean were not primarily related to Lean tools or technical issues. The most difficult issue was related to people and how to influence their attitudes, behaviours and thinking. Apparently, the Lean implementation was going to take much longer than intended. The initial view of the implementation as a project with an end was replaced by a view of the Lean implementation as a never-ending process. The fantasy of a fast Lean implementation by introducing Lean tools and some education by consultants was hit by the reality, in the shape of unpredicted needs and incapacity to meet and handle some of these needs. The view of Lean changed from a toolbox view to a philosophy view with peoples' thinking and behaviours as the core. The president of the company describes the evolving perspective as:

We have been trying to find the way to best practice and along the way found problems that forced us to develop our way of working... I myself describe this process in a totally different way today than what I did five years ago, completely.

This change in view of Lean is illustrated in Figure 2.

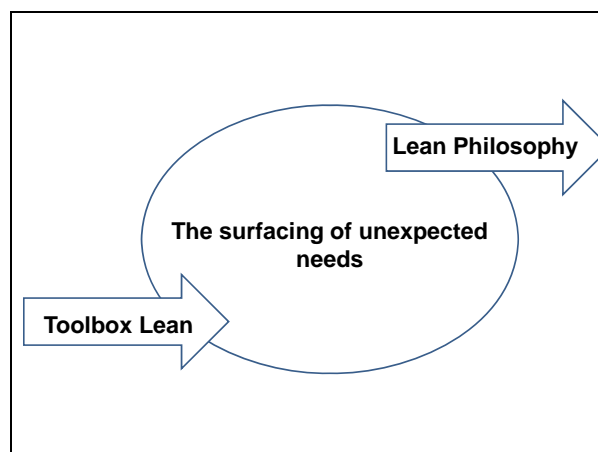


Figure 2. The view of Lean evolves due to the surfacing of unexpected needs.

HR Department Perceived as an Obstacle

The shop floor managers in production claimed to be comfortable and confident with the technical side of Lean, but felt that they lacked skills and knowledge about how to influence behaviours and engage people in continuous improvements, problem-solving and future changes for the better. To solve the need for more knowledge about the human side of Lean, the managers working in production started to visit companies that were said to have successfully implemented it. Furthermore, most shop floor managers participating in the research went to Japan for a Lean training course. During the course, there are visits to Toyota sub-contractors as well as to Toyota City. Most of them have also taken part in a three-day course in Sweden, with focus on practicing creation of worksheets, standardising work, takt¹, and running a production line. The shared knowledge and the experiences gained from this training in Japan and in Sweden served as a “joint platform” for discussions about Lean and the implementation process among these shop floor managers. These discussions, however, were occurring locally in parts of the organization, not covering the whole organization and leaving higher management levels out for the most part. From the discussions, a locally shared view of Lean was slowly shaped and a uniform understanding emerged indicating that with Lean the manager’s role was changing from a manager planning, budgeting and controlling to a manager also being a leader, role model and a teacher, supporting and coaching the workforce to perform the value-adding work from the customer’s perspective. To be able to fulfill the new role the managers in production, the “-*gemba*-”, felt that they needed support and increased ability to spend more time at the shop floor to support people development. To get support with developing people it would be natural to expect the shop floor managers to make contact with the HR department, but that was not an option from the shop floor manager’s perspective.

Because the HR department had not been involved at the beginning of the Lean journey, the HR people were not seen as understanding or knowing much about Lean at all. The shop floor managers, from the plant manager to first-line supervisors, describe the HR department as an obstacle at best and a threat to Lean implementation at worst. The HR department was said to act contradictory to what was needed by: (1) taking up the managers’ work time by requesting various numbers and statistics which needed to be computer processed and located; and (2) hiring new people on the basis of diplomas rather than personality and attitude. The managers felt the requests for statistics were basically waste of time; time that they felt was needed for people development and for supporting problem-solving activities on the shop floor. The second main factor involved HR’s focus on diplomas and degrees, and their perceived excess of power in hiring decisions. In contrast, when hiring new people the shop floor managers emphasised personality and attitude. They said that a person’s personality and attitude was something that was difficult, or impossible, and time-consuming to change, but that an individual with a “good” attitude toward learning and working in teams could always learn the job. A nice diploma or a degree from a university was not seen as a sign of right attitude and a personality that was fit for teamwork. Managers felt that they needed to have more influence on decisions regarding whom to be hired into their own teams and organization.

Among top management one of the product area managers expressed concern that change efforts were initially prioritised by calculated financial payback from increased productivity. This resulted in production units being prioritised in the change effort, leaving support functions that do not generate direct financial results behind in the development process and thus less able to support. This fragmentation of the organization causes

¹ Takt time is the total production time divided by the numbers of units required by the customer (Imai, 1997).

internal tension and slows down the process.

Introduction of New Managers

The introduction of new employees, especially managers into the organization and its way of working was something repeatedly mentioned as an improvement area involving HR. In order to be able to keep a unified direction regarding improvements and support the organization in its development, new managers need to be given a thorough introduction in what the organization aspires to achieve. Having a senior manager in place who does not fully understand the organization's requirements and aspirations for development causes a lack of support, credibility and possible fragmentation within the organization. Clarity regarding policy deployment or a framework for inspiring people with the new way of working is mentioned together with a need for competence development for leaders. Management's ability to communicate is mentioned as a key factor in regard to this, one senior manager stating that:

... I feel that we sometimes take too little time to communicate what it is we are really trying to achieve and for what reasons. And this may result in some people not fully understanding the reasons for our decisions. If we on top of that complicate things we will generate resistance instead of inspiration. Even if we say the same thing that does not mean we put the same meaning into what we say. So even within top management we should have more discussions.

Lean and its implications are described quite similarly at all management levels, but the claim of shop floor managers that top and sometimes middle management see Lean quite differently than they themselves do may indicate that communication between management levels is not sufficiently addressing policy deployment and way of working.

Discussion

Although managers at all levels described a change in their view of Lean over time from a technical, toolbox view to a philosophy view, with more focus on people, learning and behaviours, some of the middle managers and all shop floor managers were under the impression that other management levels, particularly top management, still had not understood the importance of the human side of Lean/TPS, i.e., that the top managers still had a Lean toolbox view. This is a sign of a lack of dialogue amongst the different levels in the organization and may create distrust between the managers of different parts and hierarchical levels of the organization. Among the shop floor managers and one middle manager, this had led them to a coping strategy they described as "putting up a safety umbrella" to prevent supporting parts of the organization, such as HR, to interrupt with instructions and plans that were to them contradictory to Lean and the "working culture" they were trying to establish at shop floor level. The use of a "safety umbrella" indicates that the problem stays hidden and is not revealed to the organization, and is thereby not possible to address and solve, which is contradictory to the Lean/TPS philosophy of highlighting problems so that they can be "Kaizen-ed". Since the HR department has a vital function in people development as described by Liker and Hoseus (2010), this organizational fragmentation resulting in conflicting priorities most likely affects the implementation negatively. The need for increased dialogue in order to avoid fragmentation and increase the ability to handle conflicting priorities was also expressed at top management level by one of the business unit presidents who indicated that simply communication is not sufficient, since even if people use the same words, that does not mean that the meaning behind the words is the same.

The perspective given by Mintzberg and Waters (1985) on strategy implementation, and emergent strategy

as implying to “learning what works”, would suggest that intentions and priorities may change in the process of implementation as the organization learns, uncovers needs and/or discovers what works. Hence Lean implementation or development in an organization may start out with one specific focus which alters over time as the organization generates competence and understanding regarding its own needs.

The differences in analyses and perspectives within an organization make communication and dialogue essential in coordinating and directing an organization in one common direction (the desired new way of working). It is found that these differences are expressed explicitly and implicitly at all levels of the studied organization indicating that several of the barriers described by Beer et al. (2005) appear to be present.

A future challenge mentioned by middle managers, and a need expressed by all the shop floor managers, are to relieve first-line managers of administrative duties to free up more time for coaching, people development and improvement work. This would be a vital initiative according to Isao Kato, one of the initial master trainers at Toyota, who tells about a saying at Toyota: “making things is about making people” (Liker & Meier, 2007, p. xxiii). Kato continues: “If people want to succeed with Lean or TPS they have to emphasize people development and making leaders capable of delivering improvements” (Liker & Meier, 2007, p. xxiii).

Given this perspective, HR policies and practices that clarify, develop, and sustain Lean processes and integrate business and people issues would be fundamental. However, among the shop floor managers, the HR department in the studied company was seen as a threat to the Lean implementation process and not a support. Shop floor managers were all very clearly saying that the HR people did not understand the daily work processes or the needs at the production level and did not understand Lean. HR was said to provide directives and solutions that were contradictory to what was needed at the production level and increased the managers’ workload. The feelings toward HR among the shop floor managers can be clearly seen in a representative statement by one of the shop floor managers: “I would never in my life contact the HR department”. This may be a reflection of what one senior manager referred to when raising concerns about how change efforts at present are prioritised by financial payback, leaving support functions that do not generate direct financial results behind in the development process and thereby possibly generating conflicting priorities, internal tension and fragmentation. The routine of developing employees, especially managers, by rotating them across functions, as described by Emiliani (2007) and Liker and Hoseus (2010), may be one way of addressing this long-term issue.

Conclusions

It is concluded that managers’ views of Lean may evolve during the implementation process, due to the learning taking place in the organization during the implementation. Even though Lean initially may be perceived as a “toolbox” where the tools in themselves are regarded as Lean, the definition may during an implementation evolve into a definition that also encompasses design and management of work. So, to claim that a “toolbox” approach to Lean implementation will result in a project-like implementation may be initially correct, but may prove to be incorrect over time due to organizational learning. Lean implementation initiated as a project directed at production units within an organization might thus over time evolve into a process of continuous improvement and prove a viable starting point provided that sufficient time is given for adaptation and learning. As the definition of Lean develops, new and unforeseen deviations or needs may be identified, as in this case happened with an increased need for leadership, people development and dialogue. These developments in turn affect the managers’ views on the implementation process and the perceived needs in

regard to Lean development.

Fragmentation in an organization due to differing financial priorities regarding what parts of the organization to focus on in Lean implementation and development may cause a lack of support and conflicting priorities in carrying out needed changes. This lack of support will affect the implementation negatively. Production units developing individually without the support that they need from middle management or HR due to variations in knowledge or differing priorities may impede Lean development efforts and generate tensions within the organization.

The impression or even fantasy that Lean can be implemented as a project in selected parts of an organization is clearly challenged by the results. Certain positive results may be reached by the utilization of the tools themselves, but the often aspired culture of continuous improvement and the sustainability of the tools are by no means guaranteed since this will require system wide alterations not readily achieved in a project approach directed at production units. Developing an organization toward a Lean way of working is clearly an evolutionary process, underlining “people development”.

As people development is fundamental in Lean development, it is suggested that it is very important, if consultants are to be used, to find consultants who have knowledge of experience in both the hard and the soft sides of Lean or the Toyota way. Also the consultants should be working directly with managers at different organizational levels, helping the managers develop knowledge and skills in people development issues.

Interdependency within an organization affects resources, priorities, strategy and ways of working, which clearly impacts Lean development and must be taken into account if a company strives to go down the path of continuous improvements and people development.

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Nurses and Job Satisfaction: Results of an Italian Survey

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Job satisfaction is a key concept within productive organizations, especially those that provide healthcare. In fact, job satisfaction and the well-being of healthcare workers play an important role in the quality of the care provided. Several studies have demonstrated the existence of a positive correlation between satisfaction and the reduction of stress, absenteeism and staff turnover. The search for variables that affect workers' job satisfaction is a key issue in healthcare organizations. The present survey aims to analyze the main factors of satisfaction and dissatisfaction regarding an Italian nursing team. The data were collected using the Mueller-McCloskey Satisfaction Scale (1990) which is a multidimensional questionnaire constructed to analyze the degree of job satisfaction amongst nurses. The findings demonstrate that nurses in this study were moderately satisfied with their jobs, although there were different degrees of variability within each ward of the Department. The areas that show a higher level of job satisfaction are "co-workers" and "interaction". The areas that indicate the highest dissatisfaction are "extrinsic rewards" and "professional opportunities". The knowledge of the degree of staff satisfaction and the factors which determine this is essential in order to enhance human resources. In fact, by taking into consideration the sub-scales and single items that generate the highest levels of dissatisfaction amongst nurses, it is possible to program specific and targeted corrective measures aimed at improving well-being at work.

Keywords: job satisfaction, nursing, organization and administration

Human resources are the key element of all productive organizations and this is especially true of those that provide health services directly to people and are therefore based on interpersonal relationships.

If the mission of healthcare is to provide high quality assistance, the professionals who work in this sector should be considered as the focal point for the efficient running of the organization. Consequently the workers' well-being assumes a prominent role in the maintenance of high standards of care.

The issue of work satisfaction is a fairly recent one which covers both organizations and phenomena that regard the world of work. This study aims to investigate the bearing of environmental conditions in the workplace, interpersonal relations, needs, involvement and expectations both on the physical and psychological conditions of the healthcare professional and on the quality of his nursing activities. Several studies have demonstrated the existence of a positive correlation between satisfaction and reduction of stress, absenteeism and staff turnover. Therefore, one of the modern challenges in healthcare is to understand what are the determining factors of staff's satisfaction or dissatisfaction.

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Background

A review of literature shows that the problem of job satisfaction has been extensively studied in many fields, including those of nursing, business, psychology, and sociology. The concept has evolved over time, but has not produced a unique connotation, because it is a complex phenomenon influenced by multiple factors (Ravari, Bazargan, Vanaki, & Mirzaei, 2012).

Locke (1976) defined job satisfaction as a “pleasurable or positive emotional state resulting from the appraisal of one’s job or job experiences”. Stamps (1997) connoted job satisfaction as “the extent to which employees like their jobs”. Spector (1997) suggested that job satisfaction is “an attitudinal variable that represents the extent to which people like (satisfaction) or dislike (dissatisfaction) their jobs”. It is one of the constructs that has often been used to describe the working condition of nursing personnel, particularly because of its significant relations with other variables (Cortese, Colombo, & Chiara Ghislieri, 2010).

Since the 1930s, job satisfaction in nursing has been studied extensively, with the aim to detect the variables related to job satisfaction.

Hoppock (1935) in his book *Job Satisfaction* developed an index to measure overall satisfaction. He claimed that job satisfaction was determined by social factors (the type of supervision and relationships with other workers), the intrinsic nature of the work and some extrinsic factors (time and pay).

One of the earliest studies was conducted by Nahm (1940), who found that variables such as “work hours, attitudes about work, relationship with managers, family/work balance, income, and advancement opportunities differentiate satisfied nurses from dissatisfied nurses”.

Since then the scientific community has tried to understand specifically which variables affect the level of job satisfaction and in which way. Numerous studies suggest that higher levels of job satisfaction are associated with favorable outcomes (Murrells, Clinton, & Robinson, 2005). It is believed that satisfied workers are more productive than dissatisfied ones (Judge, Thoresen, Bono, & Patton, 2001; Ravari et al., 2012) and that job satisfaction, as an independent variable, has a great influence on behavior (Piko, 2006). In addition, dissatisfied workers incur more frequently in absenteeism, turnover and burnout (Lu, Barriball, Zhang, & While, 2012).

A cross-sectional study conducted in the US has investigated job satisfaction amongst 3,472 nurses, noting that there is a correlation between job satisfaction and years of work, the role, the retirement plan and the geographic area (Ma, Samuels, & Alexander, 2003).

In the literature, there are other variables commonly associated with job satisfaction: work stress, nurse-physician collaboration, and professional autonomy (Best & Thurston, 2004; Wells, Roberts, & Medlin, 2002; Finn, 2001). A meta-analysis of 2007 showed a negative correlation between job satisfaction and stress, while there was a positive correlation in the relationship between nurse-doctor and professional autonomy (Zangaro & Soeken, 2007).

However, a Finnish study claims that a leading role in the issue of job satisfaction is played by both interpersonal relationships with co-workers, and the provision of high quality care (Utriainen, Kyngäs, & Nikkilä, 2011). In addition, similarly an American study conducted on 5,000 nurses states that job satisfaction is correlated with the ability of nurses to take charge of their situation (Amendolair, 2012).

The working environment is also very important. A US study has highlighted the importance of common environmental factors such as light, noise, odors and colors in the determination of job satisfaction (Applebaum, Fowler, Fiedler, Osinubi, & Robson, 2010).

Another key assumption is that job dissatisfaction is often caused by a discrepancy between the worker's expectations and reality (Chan, Leong, Luk, Yeung, & Van, 2010).

Another important factor is the atmosphere within the organization itself (Meeusen, Van Dam, Brown-Mahoney, Van Zundert, & Knape, 2011). A study conducted in South Africa says that the work dissatisfaction is caused by factors internal to the work environment, such as organizational climate. In fact, this produces negative effects on the employees, and causes an increase in phenomena such as absenteeism (Lephoko, Bezuidenhout, & Ross, 2006). An important role is played by the nursing coordinator, whose task is to facilitate the relationships of the nursing team and thus facilitate the process of care (Utriainen & Kyngäs, 2009).

Given the multitude of factors that contribute to characterize nurses' job satisfaction, and the importance of job satisfaction on the outcomes of their activities, the search for variables that affect the well-being of workers remains a key issue for healthcare organizations.

Aims

The aims of this study were:

- (1) To investigate the sense of job satisfaction amongst a team of nurses;
- (2) To analyze the main factors resulting in the satisfaction and dissatisfaction of the team observed.

Methods

Design and Participants

A cross sectional study was conducted. The survey was carried out during 2010 on all nurses ($n = 116$) working on nine wards belonging to a Department of Internal Medicine, specialized in the treatment of immuno-allergy and airway diseases at the University Hospital "Ospedali Riuniti" in Ancona (Italy).

Instruments

The Mueller-McCloskey Satisfaction Scale (MMSS) (1990) was used to analyze the degree of job satisfaction amongst the nurses. This was a multidimensional questionnaire constructed to assess the satisfaction of hospital nursing teams. The MMSS used eight sub-scales to measure and support three theoretical dimensions of job satisfaction (Wild, Parsons, & Dietz, 2006): safety (extrinsic rewards, scheduling, family/work balance), social rewards (satisfaction regarding co-workers and interaction), and psychological rewards (satisfaction regarding professional opportunities, praise/recognition, and control/responsibility). The tool has 31 items rated on a 5-point Likert scale with higher numerical values representing greater satisfaction. The reliability, construct validity of the scale and the internal consistency (Cronbach's $\alpha = 0.89$) were determined to be acceptable (Misener, Haddock, Gleaton, & Abu Ajamieh, 1996; Wild et al., 2006; Price, 2002).

Research Procedures

The variable under investigation was the job satisfaction of the nursing staff.

Satisfaction was investigated both on an aggregated and a disaggregated basis. The determinants of satisfaction were the eight sub-scales specified by the MMSS.

The questionnaire was completed anonymously between April and June 2010. There was no direct interview with the participants, but an explanatory letter was attached to the questionnaires.

Statistical Analysis

The data was processed using SPSS software (version 19.0). Satisfaction was analyzed in relation to each of the wards of the Department and each sub-scale of MMSS.

Results

Participants and Descriptive Data

Of the 116 nurses in the department, 104 returned the questionnaire (89% response rate).

The individuals present in the sample have a median age of 34-37 years, with a mode of ≤ 30 years. It is composed mainly of women (88.5%). And 56.7% of the sample have university qualifications.

The majority (49.2%) reported more than 15 years' experience, while 31.7% of nurses reported less than four years' experience. All the various types of contracts (full-time and part-time) currently available under the Italian employment system were featured in the sample.

Main Results

Table 1 shows the average job satisfaction of the nursing staff.

Table 1

MMSS: Average Values

	Mean score
Extrinsic rewards	2.70
Family/work balance	3.12
Scheduling	3.07
Co-workers	3.68
Interaction	3.23
Professional opportunities	2.74
Praise/recognition	3.01
Control/responsibility	3.19

Table 2 shows the mean scores of the MMSS disaggregated for the individual characteristics of the sample analyzed.

Table 2

MMSS: Disaggregated Values

		Mean score							
		Extrinsic rewards	Family/work balance	Scheduling	Co-workers	Interaction	Professional opportunities	Praise/recognition	Control/responsibility
Age	≤ 30	2.78	3.08	3.08	3.63	3.55	3.09	3.03	3.23
	31-33	2.88	3.12	3.25	3.62	3.33	2.89	3.25	3.50
	34-37	2.66	3.44	3.09	3.76	3.33	2.86	3.09	3.32
	38-45	2.56	3.05	2.88	3.86	3.10	2.42	3.13	3.14
	46+	2.60	2.91	3.08	3.53	2.75	2.39	2.51	2.72
Gender	female	2.70	3.14	3.10	3.73	3.28	2.77	3.00	3.23
	male	2.67	2.96	2.90	3.25	2.86	2.56	3.06	2.85

(to be continued)

Schooling	Diploma of higher education	2.81	3.33	3.24	3.67	3.35	2.91	3.25	3.40
	University degree	2.78	3.05	2.99	3.74	3.44	2.97	3.06	3.25
	Regional training school qualification	2.58	3.03	3.04	3.63	3.01	2.48	2.83	3.02
Years of practice	≤ 4	2.79	3.06	2.99	3.79	3.51	3.00	3.17	3.35
	5-7	3.14	3.42	3.23	3.46	3.28	2.98	2.92	3.25
	8-14	2.43	3.37	3.31	3.64	3.33	2.89	3.33	3.63
	15-24	2.66	3.00	2.93	3.83	3.11	2.45	3.00	2.99
	25+	2.58	2.91	3.06	3.50	2.77	2.36	2.51	2.70
Work shifts	Morning shift	2.38	3.46	3.42	3.38	2.96	2.80	2.71	3.25
	Horizontal part time	2.33	3.13	3.18	4.17	3.11	2.47	2.20	2.25
	Vertical part time	1.89	3.75	3.13	3.17	3.67	2.73	2.67	2.75
	Supply/temp staff	2.33	2.76	2.76	3.95	2.91	2.31	2.78	3.18
	Full time	2.85	3.10	3.07	3.65	3.30	2.82	3.15	3.28

Table 3 shows the Chi-square test to assess the statistical significance of the observed results.

Table 3

Test Chi-square

	Extrinsic rewards	Family/work balance	Scheduling	Co-workers	Interaction	Professional opportunities	Praise/recognition	Control/responsibility
Chi-square	52.750	93.135	64.808	40.308	69.250	35.385	37.885	50.327
<i>df</i>	10	16	18	6	12	15	16	14
<i>P</i> -value	0.000	0.000	0.000	0.000	0.000	0.002	0.002	0.000

Table 4 shows the Pearson correlations between sub-scales of the MMSS and the variables of “age”, “years of practice”, “work shifts”, and “schooling”.

Table 4

Correlations (ρ -Spearman)

		Extrinsic rewards	Family/work balance	Scheduling	Co-workers	Interaction	Professional opportunities	Praise/recognition	Control/responsibility
Age	Coefficient	-0.172	-0.045	-0.105	0.000	-0.273**	-0.329**	-0.225*	-0.188
	Sig. (2-code)	0.081	0.648	0.291	1.000	0.005	0.001	0.022	0.055
	<i>N</i>	104	104	104	104	104	104	104	104
Years of practice	Coefficient	-0.136	-0.036	-0.029	-0.076	-0.283**	-0.312**	-0.256**	-0.240*
	Sig. (2-code)	0.168	0.720	0.772	0.441	0.004	0.001	0.009	0.014
	<i>N</i>	104	104	104	104	104	104	104	104
Work shifts	Coefficient	0.321**	-0.090	-0.061	-0.017	0.150	0.122	0.309**	0.164
	Sig. (2-code)	0.001	0.370	0.536	0.860	0.129	0.217	0.001	0.096
	<i>N</i>	104	102	104	104	104	104	104	104
Schooling	Coefficient	0.111	0.050	-0.018	-0.070	0.236*	0.263**	0.140	0.146
	Sig. (2-code)	0.260	0.618	0.854	0.478	0.016	0.007	0.156	0.138
	<i>N</i>	104	102	104	104	104	104	104	104

Notes. ** $p < 0.01$ (two-tailed); * $p < 0.05$ (two-tailed).

Discussion and Conclusions

The nurses in this study were moderately satisfied with their jobs. The top overall areas of satisfaction were “co-workers” (3.68) and “interaction” (3.23). These results are supported by international literature. Several studies point out that the areas concerning “co-workers” and “interaction” are an important factor for job satisfaction (Price, 2002; Bjørk, Samdal, Hansen, Tørstad, & Hamilton, 2007; Lu et al., 2012).

The areas that produced the highest dissatisfaction were “extrinsic rewards” (2.70) and “professional opportunities” (2.74). These results highlight the critical area, because they have been indicated as key factors for job satisfaction (Price, 2002; Brady-Schwartz, 2005).

The job satisfaction of nurses decreases with the increase in age of the respondents (the “38-45 years” age group is the one that scored lower mean scores for almost all areas of the MMSS) and with the years of practice (lower scores are expressed by nurses who have more than 15 years of career experience).

Age is a biographical variable usually examined in job satisfaction studies. Studies by Baggs and Ryan (1990) and Agho (1993) found a relationship between age and level of satisfaction. What was interesting about the findings from both of these studies was that younger nurses and those with less experience were more satisfied than their older and more experienced colleagues. This is in contrast to other findings, which demonstrate that job satisfaction in nursing increases with age (Campbell, Fowles, & Weber, 2004; Bjørk et al., 2007; Curtis, 2008).

MMSS with higher values can be observed in nurses with a university education. Literature provides conflicting results with regard to education and job satisfaction. Some authors have found that schooling was inversely related to satisfaction with the job: those with better education were less satisfied with their jobs (Shah, Al-Enezi, Chowdhury, & Al Otabi, 2004; Piko, 2006; Curtis, 2008). These results are different from those obtained in the present study. Instead, other authors have indicated a positive relationship between the highest level of nursing qualifications and job satisfaction (Schutzenhofer & Musser, 1994; Bjørk et al., 2007; Zurmehly, 2008).

The results for shift works differ more. Nurses in full-time work indicate greater satisfaction in the first (extrinsic rewards), sixth (professional opportunities), seventh (praise/recognition) and eighth (control/responsibility) sub-scales of the MMSS. Nurses who work part-time feel more satisfaction with the second (family/work balance), fourth (co-workers) and fifth (interaction) sub-scales. The major criticalities are attributable to supply/temp staff especially toward the second (family/work balance), third (scheduling), fifth (interactions) and sixth (professional opportunities) sub-scales of the MMSS. Other studies demonstrated that work shifts other than the day shift were not related to satisfaction (Hoffman & Scott, 2003; Kovner, Brewer, Wu, Cheng, & Suzuki, 2006).

There is a corresponding Chi-square at all sub-scales of the questionnaire. The test is statistically significant as the findings do not depend on chance.

Therefore, by considering the correlations between the different variables the following points can be demonstrated:

(1) Negative correlations which are statistically significant between “age” and the fifth area of MMSS “interaction” ($\rho = -0.273$), the sixth area “professional opportunities” ($\rho = -0.329$), the seventh area “praise/recognition” ($\rho = -0.225$), between “years of practice” and the fifth area of MMSS “interaction” ($\rho = -0.283$), the sixth area “professional opportunities” ($\rho = -0.312$), the seventh area “praise/recognition” ($\rho =$

-0.256), the eighth area “control/responsibility” ($\rho = -0.240$);

(2) Positive correlations which are statistically significant between “work shifts” and the first area of MMSS “extrinsic rewards” ($\rho = 0.321$), the seventh area “praise/recognition” ($\rho = 0.309$), between “schooling” and the fifth area of MMSS “interaction” ($\rho = 0.236$), the sixth area “professional opportunities” ($\rho = 0.263$).

In conclusion, the results of this study indicate moderate levels of job satisfaction amongst nursing staff, although there are different degrees of variability within each ward of the Department.

Knowledge of the degree of staff satisfaction and the factors which determine this is fundamental to enhance human resources. In fact, by taking into consideration sub-scales and individual items that have generated higher levels of dissatisfaction amongst nurses, it is possible to program specific and focused corrective measures, aimed at improving well-being at work.

Implications

As a long-term investment, hospital management should promote work environments that support job satisfaction in order to attract good nurses to such employment opportunities and thus improve the quality of nursing care. The results of this study may provide important information for hospital managers and therefore enable them to plan and implement specific measures to improve the job satisfaction of nurses.

Moreover, identifying the causes of job satisfaction or dissatisfaction amongst nurses, together with the possible factors which favour these crucial aspects of working life, will help to perfect strategies for recruiting and retaining staff.

Limitations

A possible limitation of this study could be found in the absence of an interlocutor when the questionnaires were completed by the sample of nurses. However, while this choice did not allow providing individual explanations of the motives and aims of the project to the interviewees, it did, on the other hand, allow ensuring that the responses would be provided as sincerely as possible without any form of conditioning and in complete anonymity.

Another limitation of this particular study regards the fact that the authors were only able to interview a very small group of nurses. This restricts its present external validity but does not preclude investigations on a larger scale.

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Best Practices in Public Business Services

—Three Regional Cases*

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This study describes the public business services for small- and medium-sized enterprises (SMEs) in sparsely populated region. Current literature provides limited information about how to effectively and efficiently organise public businesses in sparsely populated areas. The knowledge related to best practises in this field remains vague. The research problem of this study can be condensed into the following research questions: (1) how the public business services are organised in three subregions in Northern Finland? and (2) what are the best practices in the three examined case regions from the service provider's perspective? The research questions are clarified by analysing and comparing the supply of public business services of the three subregions in Oulu South. As a result of this multiple case study, the services for SMEs and best practises within a rural context are clarified.

Keywords: public business services, small- and medium-sized enterprises (SMEs), best practices, growth, sparsely populated context

Specialised business services in general can be divided into private, semi-public and public business services (Kolehmainen, 2006) and these services include financing, consultancy, incubation and technology transfer. In this study, the focus is on public business services. In Finland, customers often view public business services (Kolehmainen, 2003) as being a multifaceted system (Kautonen & Hyypia, 2009). Services are provided by national organisations, as well as by regional agencies, such as science and technology parks and centres, regional development agencies, incubators and other types of organisations. According to recent report, there are a vast amount of public business services in Finland. However, the services are complex and scattered from company perspective—partly because of project-based funding, the field remains mixed and frequently changing (Ministry of Employment and the Economy, 2012). This multiple case study explores how the public business services are organised by municipalities, subregions and development organisations, and it describes the best practises.

The Oulu South region is situated in the southern part of Northern Ostrobothnia. Oulu South is not a

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governmental unit or area. It was formed to increase inter-municipal co-operation and to gain the critical mass needed for national and international competition. The region consists of three subregions and 14 municipalities and a population of approximately 90,000 inhabitants. There are about 4,600 active companies in Oulu South; the majority of them (95%) are micro-sized companies (Statistics Finland, 2012).

Small- and medium-sized enterprises (SMEs) are considered to be an important and integral part of every country's economy; SMEs are the fastest growing sector of many economies and they are more flexible and adaptable in terms of their structure and their ability to more quickly respond than larger organisations (Tagliavini, Ravarini, & Antonelli, 2001; Yifeng, 2011). SMEs are often associated with a higher economic growth of nations (Beck, Demirguc-Kunt, & Levine, 2005; Ciemleja & Lace, 2011; Reynolds, 1997; Robson & Bennett, 2000). The impact of SMEs on employment is significant (Ayyagari, Beck, & Demirguc-Kunt, 2007). On the other hand, compared to large enterprises, SMEs typically have fewer financial resources, lower technical expertise and more limited management skills (Blili & Raymond, 1993; Yifeng, 2011). A large SME sector, as such, does not directly cause economic growth, but is indeed a key characteristic of successful economies. A successful SME sector can be considered to be a vital part of growth and development in sparsely populated regions.

Rurality can be defined in traditional descriptive terms, including the level of population density, the rate of population loss or gain, settlement size, local economic structure and landscape (Stathopoulou, Psaltopoulos, & Skuras, 2004). Rural businesses tend to be small businesses in rural communities face geo-demographic, socio-cultural and economic concerns. Remoteness brings about transportation challenges as well as increases in manufacturing costs and longer workforce commutes. Low population density may also limit the available skilled labour as well as employment options. The per capita, household income and educational level of rural residents tend to be low in comparison to their counterparts in urban areas, and rural businesses may have lacked sufficient access to financing. On the other hand, Shields (2005) has found that rural entrepreneurs viewed neither resource constraints (financing, technology and transportation) nor labour issues (availability of skilled workers and childcare) as significant sources of adversity. Socio-cultural features, such as gender roles, cooperation, communication and social and business networks, are closely intertwined with small business operations in rural areas (Shields, 2005).

The subregions in rural area are facing context-specific challenges as they provide services for their customers. This study's research problem can be condensed into the following research questions:

- (1) How the public business services are organised in three subregions in Northern Finland?
- (2) What are the best practices in the three examined case regions from the service provider's perspective?

These questions are studied by analysing the supply of services of the three subregions. This is a case study with a holistic strategy; the power of case study is in clarifying the complicated processes and in obtaining new knowledge when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used (Yin, 1994). The empirical evidence was collected from three subregions of Oulu South at the end of 2011 and at the beginning of 2012. Interviews were conducted using a similar research process and questionnaires. The data and the case study evidence were further analysed and synthesized. By investigating the three cases, this study explored how public business services are organised in rural areas and describes the best practises from a service provider's perspective.

Method

This is a holistic multiple case study (Saunders, Lewis, & Thornhill, 2007; Yin, 1989). The research process of this study is presented in Figure 1.

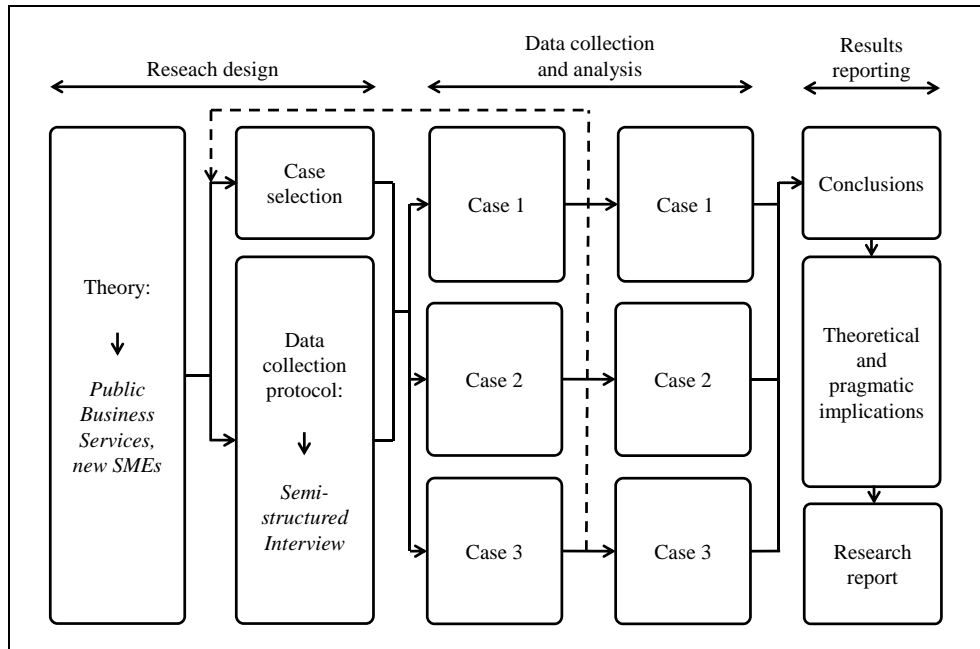


Figure 1. The research process of this study (modified from Yin, 1989).

In this study, the unit of analysis is a public business service network located in a sparsely populated area. The empirical data were gathered via semi-structured interviews and public archives related to the three case subregions of Oulu South. The interviews were conducted face-to-face during fieldwork. The questionnaire was consisted of following sections:

- (1) Clarification of the purpose of the interview;
- (2) Basic information of the organisation and the interviewee;
- (3) General description of the services provided by the service provider;
- (4) Description of the best practises;
- (5) Evaluation of the services;
- (6) Description of the success cases and best practices.

During the interview, the interviewer summarised the explanation provided by the interviewees in order to avoid a biased or incomplete interpretation. Multiple sources of evidence were used, including quantitative and qualitative evidence. The case study evidence was saved to the database. The case study evidence was collected by a researcher trained in data collection procedures and in the theoretical background of this study. The interviews were recorded and lettered. In an inclusive and iterative process, the data were analysed and the main findings were summarised.

Results

The Nivala-Haapajärvi Subregion Case

The Nivala-Haapajärvi subregion (five municipalities, 30,333 inhabitants, 1,600 companies) has arranged

its business development services via the development company NIHAK, which is operating as a limited company (see Table 1). The NIHAK is a municipal producer and its duty is to develop the region, together with its member municipalities and partners, by means of programme-based regional development. The aim of the business development services is to develop several kinds of business activities, excluding the primary production in agriculture and forestry which are the responsibility of other actors/organisations.

Table 1

The Service Description of the Nivala-Haapajärvi Subregion

	Nivala-Haapajärvi subregion
Organisation of services	NIHAK
Municipalities	Haapajärvi, Käsämäki, Nivala, Pyhäjärvi, and Reisjärvi
Inhabitants	30,333
Number of enterprises	1,600
Employees working with entrepreneurs	10

The roles of the personnel are divided in such a way so that the personnel have both a horizontal (thematic) responsibility (e.g., the incubation services and the services of the growing enterprises) and a vertical (local) municipal business development consultation responsibility. In every member municipality, there is a business development manager and an agency where the entrepreneur receives a start-up package containing information on business development services with the principle of a “single window” system. The business development managers respond to the business development services in their “own” municipality, but co-operate with each other as a network, depending on their areas of expertise, for the benefit of the subregions.

The main content of the service is recognising and understanding the process and the life-cycle stage of the business activity and then offering the right service. The client receives information from the business development services about such things as start-up grants, business development assistance and loans and securities for loans. Moreover, acquisition and other ownership change related services are offered.

In addition to producing the services, the development company is an agent for the services provided by the cooperation partners (TE-Office, Leader-Activity Group, ProAgria, ELY-Centre, Finnvera, Tekes, etc.), including such things as manufacturing studios, premises, international services, etc. In this study’s interviews, the NIHAK is regarded as an immediate interface between the enterprises, society and the public economy. Several actors participate in the cooperation coordinated by the NIHAK. The development company’s personnel need to have broad enough know-how and readiness concerning the services offered by the cooperation partners, so that the development company’s role as an intermediary organisation works. The NIHAK business development managers also act as an intermediary and a consultant when they search for a suitable service concept for the client enterprise.

The proactive nature of the services is pointed out. The business development managers contact the enterprises in the region, annually. In the development discussions, they make every attempt to understand the enterprise’s situation so that they can provide sufficient information about the specific services that best fit the company’s needs.

Best Practices of the Nivala-Haapajärvi Subregion Case

Based on the interviews, the best mode of action was to get involved in the client process and to obtain in-depth knowledge of that process. This was considered to be an important innovation of the subregion’s

business development services. Instead of measuring visits at the enterprises, the business development manager orientates himself and becomes acquainted with the enterprise; in other words, he/she achieves a thorough understanding of the client. This may presume the need for several discussions and sessions with the entrepreneur. After that, the enterprise's situation has often been comprehensively perceived and the enterprise can be offered the right public business development service. These development discussions are followed by and measured with a customer information system, which includes information and analysis about the discussions with all the enterprises in the region. Quantitative targets related to the development discussions are set yearly and they can be achieved only by an active customer acquisition. The active model has provided positive customer experiences; the real customer needs are often expressed only in the face-to-face development discussions. These targets cannot be achieved through a passive approach. A proactive approach and in-depth knowledge of the client's process have been successfully implemented by the NIHAK.

A successful business development manager should possess multiple skills, which enable the entrepreneur to receive a locally valid service, answer or guidance. Sharing of these skills is essential to the success of the service. The information is shared through informal cooperation and mutual communication between the staff. By giving each business development manager both a thematic and a local field of responsibility and by having all the managers working as a team, the NIHAK has succeeded in utilising the personal skills and the knowledge of all staff members to benefit the entrepreneurs in every member municipality. This flexible and agile division of labour is considered to be a best practise.

The shared export secretary service is a third best practice that is highlighted. It operates from the region as a partner for the entrepreneur because small businesses have limited resources for recruiting their own export secretary. Among other things, a shared export secretary opens doors and helps the enterprises with international contacting, communication, documentation, visits service and interpretation. These practical issues are significant obstacles for small enterprises seeking international markets. A common export secretary functions as a representative of a company and builds a customer relationship with the managing director.

The Haapavesi-Siikalatva Subregion Case

In 1996, the establishment of the Haapavesi-Siikalatva subregional joint authority (three municipalities, 15,031 inhabitants, 800 companies) brought together regional development and business services of the subregion's municipalities (see Table 2). Nowadays, a joint authority, the Siikalatva Development Center produces business services for the municipalities of Siikalatva and Pyhäntä, and, via regional development projects, it also does so for the municipality of Haapavesi. However, Haapavesi produces its general business services locally.

Table 2

The Service Description of the Haapavesi-Siikalatva Subregion

	Haapavesi-Siikalatva subregion
Organisation of services	Siikalatva Development Center, Municipality of Haapavesi
Municipalities	Haapavesi, Siikalatva, and Pyhäntä
Inhabitants	15,031
Number of enterprises	800
Employees working with entrepreneurs	7 (varies according to the projects)

The Siikalatva Development Center is mainly responsible for business development in the subregion. The

essential part of these services is project-based. The Siikalatva Development Center offers all business services, ranging from entrepreneurs thinking about establishing a business to businesses operating on a regular basis. The vital part of this business development includes the formation of a business development strategy, launching and coordinating projects according to that strategy, the production of business consulting services and the development of entrepreneurial training. The Siikalatva Development Center has a business agent and it also coordinates about 10 EU-funded projects, which are aimed at providing added value to the companies. The project managers participate in the production of business services.

The main content of the business services include: flexible facilities and location, high-level advice and consultation, training, research and development services, and services provided through the advantages of national and EU-level policies. A start-up company is a typical Siikalatva Development Center customer. More and more, a new entrepreneurially oriented customer takes aim at the service business market. The most essential questions about how to run a business focus on the funding of investments, liquidity and obtaining financial support related to expansion and marketing. However, the Siikalatva Development Center does not offer direct funding.

In addition to the direct services, companies are linked to the services provided by the network. Often the network can provide the necessary services if the service cannot be directly offered during the first contact. Lately, the need for services supporting ownership changes and generation changes has increased. This subregion has variable non-industry-specific training projects that aim to serve a “broad audience”, including a variety of industries and different size categories.

Best Practices of the Haapavesi-Siikalatva Subregion Case

A flexible small-scale financing model, rapid response time and a low threshold for an entrepreneur to participate in the provided services were identified as the best practices in this subregion’s business development services.

In the small-scale financing model, support in the amount of a few thousand Euros is given to the enterprise so it can accomplish a development project or purchase items, such as a needed tool, equipment, a service or software. The amount of the contribution is maxed at 50% of the value of the investment. This funding is meant to function as a boost in the right place at the right time. In this model, the entrepreneur receives a phone call to let him/her know if his/her enterprise is being awarded this small-scale financing. While the support does not have a large monetary value, it may have a decisive and effective influence when used at the right time and to address an acute need.

The model of rapid response time is another proven action in this subregion’s business development services. The business development services respond to the entrepreneur’s request very rapidly. The aim is to contact the entrepreneur facing a problem at some point during the same day. This is also true if the request is made on the weekends. During this rapid response contact, an appointment is made to provide the entrepreneur with the needed consultation and plans are made to resolve the problem.

Based on this case study’s interviews, the fact that the business development services’ utilisation threshold is low means that the service implementation is done well. An entrepreneur is able to directly meet with someone who can help (e.g., the mayor) to discuss his/her business need. Furthermore, the business development service personnel personally know the enterprises and the entrepreneurs in the region. Additionally, the service providers are well-known among the local authorities. This makes it easier to rapidly

find the right actor to provide the needed services for the entrepreneur. The subregion's area is large and there are only few enterprise service providers, which creates the need for the development centre to be proactive. The threshold for approaching the entrepreneur is also lowered by the fact that the business development actors physically meet with the entrepreneur as soon as the entrepreneur informs them about their need for the services.

The Ylivieska Subregion Case

The Ylivieska subregion (six municipalities, 44,062 inhabitants, 2,300 companies) does not have a single development company; the municipalities in this subregion implement the business services more or less independently (see Table 3). However, multidimensional subregional collaboration is broadly used in public business service production. Some of the municipalities buy the services from the subregional association. The starting point is to ensure that the Ylivieska subregion has the capability to provide a variety of services through the entire lifecycle of the company.

Table 3

The Service Description of the Ylivieska Subregion

	Ylivieska subregion
Organisation of services	YTEK Ltd., Ylivieska subregion, municipalities (Sievi, Oulainen, Kalajoki)
Municipalities	Ylivieska, Kalajoki, Oulainen, Sievi, Alavieska, and Merijärvi
Inhabitants	44,062
Number of enterprises	2,300
Employees working with entrepreneurs	10 (varies according to the projects)

In Ylivieska subregion, the public business services are provided by a network or by organisations developing services together through collaboration and concrete resource sharing. The network seeks to build shared interfaces with customers. The aim of the subregional services is to provide extensive support for companies, entrepreneurs, and potential entrepreneurs.

In Ylivieska, the business services are provided by YTEK Ltd., which is a company owned by the town of Ylivieska. YTEK offers its customers advisory services and facility solutions. All YTEK personnel are involved in these basic advisory services. Later on, as the current state and the goals of a company are known, the special fields of expertise are used for more specialised service. Based on this case study's interviews, the most important competency is the capability to recognise the company's main problems by listening to the entrepreneur. The problems are analysed, and based on that analysis, the next developmental steps are agreed upon.

The majority of the services are provided through "Innoveturi", which is a consortium project administered by the subregion and implemented by YTEK. The Innoveturi functions as an umbrella for several business development projects. The results of the projects are productised by the Innoveturi and provided by the subregional business services. The goal of the productisation is to clarify the service portfolio so that, after first contact with a customer, the personnel can guide a customer to the right service/specialist. The subregional specialists are located in Ylivieska, Kalajoki, and Oulainen. The intention is to minimise ad-hoc services and develop more specialised services according to the lifecycle of the company. The services are currently organised according to a general lifecycle model divided into start-up services, know-how and networking services, growth and internationalisation services, and change of ownership services.

Best Practices of the Ylivieska Subregion Case

Based on the case study interviews, the enterprise service providers in this region view the regional network model as an especially fine and functional mode of action. This model allows access to services in an appropriate way. In every locality in the region, a local service is available. Through this service the client's problem can be responded to and the issue can be directed to the right place in the service network, when necessary, if a direct solution cannot be found within the local services. The regional local services that the client can readily have access to have, thus, are successfully united with the expert services available at the subregional level in which the special areas of expertise have also been successfully divided among the specialists. The network model has been proven to provide expert services close to the client, regardless of his/her home town.

Discussion

The aim of this study was to describe the public business services for SMEs in sparsely populated areas. The first research question is: How the public business services are organised in three subregions in Northern Finland? The organising of public business services in Oulu South can be described through four main characteristics (see Table 4). First, the services are organised through various administrative solutions. Even though the municipalities share the common interest of fostering the vitality of business and industry in their region, the solutions of organising and administrating public business services vary due to the historical background of the collaboration in the region. Second, the services are organised through important personal relationships. The relationship between business service managers and entrepreneurs is very essential. Interacting with the entrepreneurs at a personal level builds trust. This personalised approach includes responding to the needs of enterprises within a short time period, maintaining contact at least on an annual basis and tailoring the services to clarify the entrepreneur-centred base for the public business services. Third, the tailoring and productisation of services are an integral part of the system. Most of the services are semi-structured, which offers the possibility to respond to the specific needs of each client. In addition to the direct services of the agencies, the services of the partner and network organisations are also offered. The productisation of services is important, especially when addressing the internal needs of the network and the partner organisations. To be able to tailor the services or to use the services of the network, the business service managers have to know the existing service possibilities. Fourth, the services are organised through multiple intermediary actors with multiple roles. The organisation offering public business services in rural areas is acting on the interface. It is essential to produce and disseminate information to the entrepreneurs, the enterprises' staff and the collaborating organisations. The role of the agencies assimilates to the regional development tasks, such as promoting the innovation possibilities and other preconditions of the enterprises.

Based on the case study interviews, it can be noted that when an operating entrepreneur with a business activity is a client of the business development services that entrepreneur's enterprise is almost always in transition. In the positive or negative transitional stages, the entrepreneur tries to utilise the public business development services. Grant applications and plans for extensions, projects and investments, as well as budgeting related to those plans, are typical services directed to enterprises engaged in a positive transition. One important function of the business service organisation is to act as a companion in discussions and to spar with the entrepreneur.

The second research question is: What are the best practices in the three examined case regions from the

service provider's perspective? Several best practises were found from these case regions (see Table 5). Based on the case study interviews, many of the best practices include flexibility, a deep understanding of the client's process and accessibility. The agile division of labour or meaningful networking, both internal and external, are also key characteristics.

Table 4

Key Characteristics of Organising Public Business Services in Rural Area

Key characteristics	Clarification
Various administrative solutions	Even though the municipalities share the common interest of fostering the vitality of business and industry in their region, the solutions of organising and administrating vary due to the historical background of the collaboration in the region.
Important personal relationships	Relationships between business service managers and entrepreneurs and among business providers are essential. Working at the personal level builds trust. The entrepreneur-centred base includes responding in a short time frame, contacting entrepreneurs annually and tailoring services to meet their specific needs.
Tailoring and productisation of services	Semi-structured services offer the possibility to respond to the entrepreneur's specific needs. In addition to the direct services of the agencies, the services of the partner and network organisations are also offered. The productisation of the services is important to the internal needs of the network and partner organisations. To be able to tailor the services or to use the services of the network, the business service managers have to know what existing services are possible.
Intermediary actors	The organisation offering public business services in rural areas is acting on the interface. Producing and disseminating information is essential. The role of the agencies assimilates to the regional development tasks, such as promoting the innovation possibilities and other preconditions of the enterprises.

Table 5

Identified Best Practices of the Three Case Regions

Regions	Best practices
Nivala-Haapajärvi subregion	Proactive approach and in-depth knowledge of the client process
	Flexible and agile division of labour
	Shared export secretary service
Haapavesi-Siikalatva subregion	Flexible small-scale financing model
	Rapid response time
	Low threshold for an entrepreneur
Ylivieska subregion	Regional network model

In the case studies of these three rural regions, the business service providers emphasised the multi-skills needed of the business development managers so they can respond to the many different needs of the local entrepreneurs.

In the Nivala-Haapajärvi subregion's best practices, the understanding of the client process was central. The flexible and agile division of labour helps business development managers better utilise their knowledge and personal skills. The shared export secretary service is a unique practise among the subregion's identified best practices. In the Haapavesi-Siikalatva subregion, best practices included the close proximity to services, rapid accessibility and low threshold. In the Ylivieska subregion, the local and regional public business services are networked. This network provides expert services close to the client, regardless of his/her home town.

This study is limited to three subregions of Oulu South located in Northern Finland. Therefore, some of

the findings may be region-specific or country-specific. Moreover, the viewpoint of an interviewee may be biased especially because he/she is asked to evaluate his/her own services from the point-of-view of the customer.

The next natural and essential step in this research is examining the customer's viewpoint. In future studies, it would be interesting to investigate more cases with similar backgrounds. The results of this study represent the viewpoint of public business service organisations functioning in sparsely populated areas. Their viewpoints might differ from a viewpoint of similar organisations in different business environments because of context-specific variables. It would be interesting to compare the results of a similar analysis made in public business services located in rural areas in other European countries or in the US.

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Profitability of a Company Through Marketing

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In the design and substantiation of business activities, an essential role is played by the strategies and the policies developed by the management bodies. The essential materialization of anticipation, strategies and policies set out the development of each company, their contents depending on the investors, the employed personnel, as well as the market segment, as a result of efficiency and effectiveness of the interface with the supra systems they belong to, the extent to which they preserve and amplify their position held on the market, developing the profitability obtained from their leadership position. Taking into consideration the market sector, the consumers hold the last decision when it comes to expressing their opinion toward a product, by liking the product.

Keywords: ascending trend, graphics, marketing

Under the circumstances of an uncertain economical environment, characterized by various changes, emphasis of competition and permanent introduction of new restrictions and limitations on certain markets, the development strategies incur as a protection and safety measure of company development and perpetuation. Generally, these strategies provide the continuous development of strategic objectives' level, permanently orienting the preoccupations of the management team for the achievement of these objectives, the market segment development, and the diversification of the product range according to the consumers' requirements.

The decisions related to the production capacity, the market segment to which we address, as well as the publicity should aim to the integration in the organisation's mission and strategy for the implementation of profit. Obtaining sustainable profits derives from the development of competitive advantages incurred on the market, as a result of the product/service offered to the consumer. The investments in human resources, which imply the marketing branch, are not carried out reclusively, but as part of a coordinated plan which shall place the company in a leadership position on the competitive market. The marketing often imposes high and proportional budgets. The marketing should sensitize the financiers with regard to the operation mode of a market. Through all these links and through their assigned tasks, the marketing department contributes effectively to the business orientation, according to environmental requirements and dynamics, only at the extent to which it is conferred the deserved status.

Strategies of Obtaining Higher Profit

The adoption of the development strategy at the organisational level is achieved as a result of the fact that a company that is on an ascending trend is considered more attractive by the investors and the employed personnel and it faces more easily both external environmental changes and its own mistakes, because it has

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many substantial strings and a stable position on the market (Florea, 2007, p. 79).

The scope of each activity is to obtain profit. Since ancient times, the profit concept manipulated the human thought. Since prehistoric times, the profit was the “guide” of merchants from the most distant lands and it facilitated the discovery of some new cultures and civilisations. Profit and gold hunting lead to America’s colonization, but also to the world’s management by the multinational companies. At present, the fight for profit can be observed in various organisations, from small businesses to the multinational ones. In this context, the foundation of a company offers the possibility to obtain profit, and the impulse of each investment is to obtain profit.

The profit is an instrument for the measurement of management activity. The more correct is the business’ mission, and the better it is carried out, the greater shall be the profit. One of the most difficult tasks of the management is to obtain a positive correlation between the organisation’s mission and the orientation toward profit.

According to its economic function, the profit comes as a dividend of the invested capital and as a reward for the associated risk. The profit offers two key pieces of information, namely: if the company does what it must do—therein lies the effectiveness of the business, and if the company does well what it does—herein lies the efficiency of the business. A good strategy or a good management depends on the extent to which it creates values, to the degree in which these values allow the acquisition of competitive, operative advantages, and on the condition that the business is well directed at an operational level. On the other hand, a business with a good operational management, but without a competitive advantage, shall not allow the achievement of a significant profit. The development of the competitive advantage, without creating new values, is similar to an action without strategy. Not only the development but also the endurance of the company are influenced by the profit, because it is considered as a measure of the economic efficiency.

Sustainable profit is based on three strengths: utility creation for the clients, the development of internal strength, and obtaining a competitive advantage (Tantău, 2011, p. 49).

For this purpose, the managers should take into account the opinions of employees and clients in order not to take the wrong way. Once determined the general direction, the managers should develop flexible strategies which may anticipate and meet the inevitable market changes.

The management basis represents knowing the clients by satisfying their needs and expectations. Only by anticipating the trends and directions, or even by the conception of some new trends, a company can remain competitive. The most important commitment of all must be that to the client: the commitment to the quality of products and services and to the duly settlement of beneficiary’s problems. Knowing to satisfy the client can be the result of some field documentations of the marketing studies, of personal observations and even of intuitions. Knowing the client is the key to improve the competitiveness through planning.

Nothing is more harmful for the success of a company than transforming the current strategy into an inviolable rule. That is the reason why the flexibility becomes the word of those who design, produce, or deliver the product. The technology can determine instantaneous transformations because the production systems may reduce the production launch time from a few weeks to a few minutes. Managers must adopt the flexibility concept before the new technology offers a market advantage.

It is very important that the company’s resources to be best used, when the profits are high, combining efficiently the human value, the capital and the materials, a product can be obtained on the market, which can be sold through different marketing channels (Mecu & Bărbulescu, 2013, pp. 161-163).

Marketing: A Continuous and Repetitive Flux as a Response to Efficacy and Efficiency

The marketing activity is an expression of the work division, of the specialized processes by which the marketing concept turns operational. This is mentioned because, as is well-known, as a general rule, marketing as an activity is an expression of specialized division of labor processes which operates as a concept (O. Nicolescu & C. Nicolescu, 2011, p. 115).

Flexibility, in terms of variety and volume, and the efficiency in terms of costs are essential in the production process within the marketing management activities. There is a great variety of production processes. At one extreme, the processes based on projects which realize one-off products and which are flexible can be found; for example, a building, software, a financial audit or the construction of a steamboat. The processes based on projects present severe limitation from the point of view of efficient repeatability and specialization of fabrication, and they are intended for a certain type of consumer, for a certain market segment which can be a customized product/service.

At the other extreme, the continuous flow and the repetitive processes can be found. These are designed to achieve a specific product or a contracted range of products, but in great quantities and at little costs. These processes can be automatic by the use of specialized equipment and by the design of positions, so that the products are processed continuously or almost continuously, but they have a limited flexibility in order to produce a great variety of products and cannot respond quickly to the changes requested by the market. The assemblings of computers, vehicles and toys are examples of repetitive processing. Paper manufacturing and water treatment are examples of continuous flow processes.

At the middle of the two extremes are the processes based on the grouping of operations, flow processes divided into lots and the cellular ones. These processes allow a great variety of products in small- or medium-scale manufacture.

The flow processes divided into lots and the cellular ones combine some basic characteristics of the flow processes and of those based on the grouping of operations into processing types. The result consists in a very good answer, both from the point of view of efficiency and of production flexibility (Militaru, 2008, p. 21).

The renewal rate of knowledge, products, and technologies in the top branches grows considerably. The current possibilities of quasi-instantaneous connection to the new information often make possible a prompt answer which can amplify the innovation and the conformation to the market requirements, tending to the real-time performance. Accordingly, innovations are also carried out more quickly and are diffused with a greater speed, leading to the diminution of the importance of time in which the consumer comes into contact with the new product.

Whereas the valuable ideas and knowledge have an essential role in the current development, people generating and possessing them become invaluable. Keeping such persons within the organization, using a variety of ways, including turning them into partners of the company in question has become a necessity.

The implementation of networks in the economy, which integrates various economic operators, oriented around the vector value, is generating economic growths. Through these networks, the speed of technical, human and economic flows increases greatly, often producing "explosive" economic effects.

In the traditionalist economy, the rarer a product was, the higher its value was. At present, a contrary situation is proliferated, in the sense that, with the increase of volume of some sort of products, as it holds a

larger share in the market, their value increases (Militaru, 2008, p. 172).

The novelty is, in essence, a relative concept that can be analyzed according to several criteria, and in the case of products it can be reflected in different forms and degrees.

The consumer has an enough large perception on the novelty of a product, beginning with minor changes for an existing product, up to one invention. Often, minor changes are treated superficially by the company's decision-makers, although they may obtain a major significance in the consumer's perception.

For the existing products, one can individualize several variants of interventions.

In general, through the changes in the field of raw materials or production technologies, it is carried out as an improvement in the quality of the finished product. The aim is that the product meets better the requirements and expectations of buyers.

It has to be taken into account that a quality improvement may be interesting only to part of the consumers, the rest may not be concerned, as a result of the effects which will be found in the price. There are consumers who are not willing to pay more, and thus, a distinction between qualitative improvements that do not substantially change the price and those that visibly affect it becomes necessary. The latter option makes necessary the change of the segment of consumers to whom the product is addressed and becomes a part of a complex and difficult effort of modification and requalification of the image. The improvement of the quality is relatively easily identifiable for buyers and it will very likely be promoted by the producer/importer.

Improving functional characteristics can pursue multiple targets, such as: increasing the number of uses of the product (the conditions under which it can be used, the ease with which it can be used, safety in use, skills in use, etc.).

This kind of intervention can lead to obtaining advantages such as:

- (1) Obtaining a strong presence on the market, and the possibility to easily address to several segments of consumers;
- (2) Generating a company image with advanced technology and flexible, especially when changes occur rapidly and in a similar short time, they may be abandoned or left as option;
- (3) Slight penetration into the distribution networks.

The improvement of the aesthetic characteristics of the product refers to the many characterization variables of the presentation mode: style, branch, colour, and, for food, the packaging and the label in particular. Aesthetic variations are based on psychological phenomena that appear in consumers but do not show the flexibility and reversibility to the functional changes of the product.

Repositioning the product constitutes a decision of the utmost importance through the review of the policy adopted. Assuming a decision of such a magnitude may incur in the conditions under which the product has weaknesses in many aspects. Market position causes are varied:

- (1) Changing/shifting consumers' wishes and preferences;
- (2) Too close/adjacent positioning on the shelf with competing products;
- (3) Positioning changes of the actions carried out by the competition;
- (4) Involuntary changes of the product's market position, as a result of some marketing actions.

The image of the product as the intervention in the field of advertising represents the frequent changing in the qualitative, functional or aesthetic characteristics of the product.

Advertising develops the heaviest impact in the changes of the product image, but isolatedly it is not enough. Sometimes, it is considered that it is easier for a company to launch a new product than to try a

requalification of the image (Diaconescu, 2005, pp. 93-94).

Advertisement Communication

The choice of vectors for the transmission of the desired message to target clients requires establishing the criteria, according to which its communication shall be carried out through advertising.

If the company has its own means of communication, the following shall be taken into account:

- (1) Creative and professional abilities of its own employees in the promotional field;
- (2) Technical and promotional capabilities held;
- (3) The high number of cases reported area covered.

Specific for each means of mass media communication shall be taken into account:

- (1) The magnitude of the impact achieved;
- (2) The size of the audience covered;
- (3) The frequency of the message transmission.

For the specialized promotion agencies, their potential shall be considered through:

- (1) The experience in the field in which the communication achievement is aimed;
- (2) The high number of cases reported area of the agency;
- (3) The reputation earned.

For any of the three big categories of possibilities of transmitting the message, the following shall also be taken into account:

- (1) The conformity to the message to be transmitted;
- (2) The rate of performance impact/involved costs;
- (3) The complementarity with other possible means of communication used (Luca & Verzea, 2005, p. 127).

A wrong scheduling of the advertising campaign can be as fatal as an inappropriate advertising material. Advertisings must be scheduled so as to reach the target audience at the time when it is better prepared and prone financially to buy. The schedule may depend on the season for some products (clothing), on cultural traditions for others (flowers for the next year monthly) or may be based entirely on the budgetary cycles of the market or of a company (industrial products) (A. Micu & A. E. Micu, 2001, p. 444).

Advertising graphics, as a form of visual communication, has at present a wide coverage area; there has always been a confrontation with visual images which have a positive or negative influence, manifested by various reactions; some of them might inform directly, might arouse the interest in an event or object, others can confuse or even annoy.

The graphics reflects, in this specific field of publicity, the need to resort to suggestive images to present or develop a particular theme for informational purposes.

Commercial advertising represents one of the publicity manifestation forms, circumscribed to a determined practical purpose, namely the impersonal promotion of sales through the formation and maintenance of an informed consumer audience. Unlike the advertising which aims to attract and to initiate as soon as possible the buying behaviour, advertising aims to inform and to influence consumers' behaviour, to educate it in the direction of adopting a consumption structure and to convince it by scientific arguments, presented in a simple, clear and accessible way (Părăianu & Pascu, 2010, p. 158).

Growth of Emerging Markets by Enhancing Customer's Satisfaction —An Impact on the Environment

Increasing the complexity of the products offered by the market, in the context of the knowledge-based economy, is highlighted by five fundamental characteristics:

- (1) Increasing the level of customization of the demand;
- (2) Increasing the complexity level of the steps that compose the life cycle of the product;
- (3) Integration of product and service concepts in the framework of the marketable goods and the gradual extinction of the pure product, respectively of the pure service;
- (4) Increasing the content of the technology embedded in the products and services offered on the market;
- (5) The integration of the emergent technologies in manufacturing processes of the goods and services, conferring them superior technical parameters (reliability, resistance, and speed of response).

Each of the five essential characteristics of the products, even if they enhance the degree of satisfaction of the customer with regard to the use of goods and services offered by the manufacturers on the market, features a direct or indirect impact on the environment, showing a strong destructive side.

Increasing level of customization demand determines the inability of companies to gain experience in what concerns the production of a certain standardized good. This aspect determines the increase of the time of product manufacture, the increase in energy consumptions, a higher rate of errors, and hence a greater number of generated waste that should be properly managed by the company. Furthermore, customized products usually involve a very high level of complexity, which is registered in brushy and individualized nomenclatures for each item individually, hence leading to increased consumption of paper. At the same time, customized products, which are not manufactured by virtue of experience effect, feature higher probabilities to be damaged and to require interventions, which, in their turn, generate new waste needed to be managed by the manufacturing company, thus contributing to increased negative impact on the environment (Ciobotaru, C. Frăsineanu, I. Frăsineanu, & Tăpurică, 2011, pp. 16-17).

One of the major issues of the century, intensely debated in the context of the majority of international political and economic events, is the economic-ecological relation. If the two approaches have been in a subordination relationship up to the present, the trends in the promotion of the concept of sustainable development at the global level require a reconfiguration of their position, for the purposes of establishing relations of coordination and harmonisation of the principles that characterize them.

The difficulty of harmonizing the principles of economic growth and ecological principles derives particularly from the fact that economists and ecologists are still situated on diametrically opposed divergent positions regarding the main ways of achieving an optimal economical solution, able to observe, as far as possible, the principles of environmental protection.

Thus, while economists appreciate that compared to the year 1950, the global income increased almost 10 times, ecologists think that this spectacular increase of the economy is contradictory to its support system, quickly depleting the planet's natural capital (Ciobotaru et al., 2011, p. 18).

The economists concerned with the new economy are sometimes also called as the economists of complexity, because they support the hypothesis according to which economies can be associated with biological systems, evolving according to the same fundamental laws, but with distinct manifestations. Increasing the level of understanding of the physical laws governing shall determine the control, to a greater

extent, of the markets' functioning mechanism, in the context of some complex developments (Ciobotaru et al., 2011, p. 19).

In the context of this type of modern economy, the knowledge based on rules becomes tacit, action-oriented, constantly changing and animating the entrepreneurial spirit able to capture, apply and develop the value with the help of advanced technologies, thereby becoming stronger and more valuable even than the natural resources and great factories, the knowledge and advanced technologies being able to transform significantly the national economies.

With the globalization of workforce, both employees and employers invest in the development of the personal value, appealing to the so-called knowledge analysts, in order to develop a long-term competition both theirs and of the organisations to which they belong.

By increasing the level of intellectualization of the work processes and the acquisition of the role of the central production factor by the human resource, the pressure on natural ecosystems is starting to diminish the competitive advantage of companies being no longer obtained on grounds of the exploitation of natural resources at the lowest costs, or on the grounds of the acquisition of advanced equipments, but for reasons relating to the level of education and creativity of the personnel, characteristic to each organization (Ciobotaru et al., 2011, p. 20).

Conclusions

Through advertising, the consumer should perceive a logic of product presentation, through the various means of presentation: announcements, posters, brochures, leaflets, catalogues, booklets, press releases, commercial mail, with special emphases on the e-mail.

Each company has its own rituals. It is an expression of the identification with the organization, with the operating environment and with the predominant management style. With their help, an intermingling of human resources and management is achieved, which allows their better identification with the company. The success remains in the memory of all the people, and this memory is marked as an event bringing the joy of life, power and, above all, gives sense to the actions of the company.

The purpose of each economic activity is to obtain profit. The profit is an important tool in measuring the management activity. The more correct is the business mission and the better it is accomplished, the greater will be the profit. One of the hardest tasks of the marketing management is to obtain a positive correlation between the product, the design and the aesthetics of the product, quality-price, market penetration, the choice of distribution channels, the elaboration of communication and promotion strategies of sales through advertising, all these consisting in the determination of meeting the consumers' needs and wishes which is reflected in the company's profits.

In the context of globalization process, the dissemination of scientific news and the access to the Internet play an essential role in the current economic revolution and the rapid changes carried out in the demographic, economic and environmental fields.

The need to protect nature is a concept emerged in the mid-19th century, which came in the support of the ecosystem and to protect the environment.

While the ecologists are concerned about the natural environment, the economists consider the market as a tool to adjust the value of resources. According to economic principles, a natural system can be considered as a fixed asset, which will bring profit as long as it is kept in a working order. When it is consumed or

decommissioned, the profit disappears.

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Distribution of Authority Between the Provincial and District/City Governments in the Republic of Indonesia

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The relationship between the provincial authorities and the government of regency/city in the distribution of authority in local government affairs of governance in Indonesia includes: First, in the area of government affairs at the present time, the provincial and regency/city governments are in the position of having to accept the government affairs that can be held in the region. Determination of government affairs in the category of governmental affairs which is compulsory and choice does not involve the participation of local government. In the future, determining government affairs between central government, provincial government and regency/city government involves local government representation that can be represented by the regional chief and council. Second, in the preparation of revenue and expenditure (budget), it shows that the provincial government has a very significant position, as any local regulations on budget's plan of regencies/cities should be evaluated first by the governor; in the case of the evaluation results are not followed up by the regent/mayor and parliament. Third, in the field of local elections, the relationship between the provincial government and the government of district/city shows that the role of district/city government as an institution is "only" as a "supporter" of election of governor/deputy governor, and the support can be realized by taking help from the aspect of the availability of human resources and the involvement of the government of district/city.

Keywords: distribution, authority, provincial government, district/city

Arrangements concerning local government entered into a new era in line with the completion of the amendment of the 1945 Constitution, particularly with regard to the substance of Article 18. Article 18 of Results of the 1945 Constitution Amendment contains at least the following items:

- (1) Indonesian territory is divided into provinces. The regions of the province are divided into districts and municipalities. And each province, district, and city has a local government;
- (2) The assertion about the embrace of the principles of autonomy and the duty of assistance;
- (3) Authorities of the provinces, regencies/cities have legislatures, whose members are elected through a general election;
- (4) Governors, regents/mayors respectively as head of the provincial, district, and municipal elected democratically;

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(5) Adopting the principle of autonomy widely, except in matters of government by law to be the affairs of the central government;

(6) The district governance has the right to establish local regulations and other regulations to implement autonomy and the duty of assistance;

(7) The relationship of authority between the central government and the provincial, district/city, or between provinces and districts and municipalities, governed by law with respect to specificity and diversity of the region;

(8) Financial relations, public services, the utilization of natural resources and other resources between the central government and local governments organized and implemented fairly and equitably under the law;

(9) The state shall recognize and respect the local government units that are special or extraordinary;

(10) Recognition and respect for the unity of indigenous people and their traditional rights are still there. It is in accordance with the development of society and the principles of the Unitary State of Indonesia.

Replacement Act No. 22 of 1999 on Regional Governance by Law No. 32 of 2004 was an effort to restructure the normative framework of the organization of the local government, and in order to adjust the paradigm of autonomy such as Article 18 of Results of the 1945 Constitution Amendment.

The implementation of Law No. 22 of 1999 brought many significant changes when compared with the Law No. 5 of 1974. Law No. 22 of 1999 has allowed the area intensely involved in the process of local governance, and has been able to participate to determine the direction and in accordance with the aspirations of regional struggles and interests of regional communities.

Law No. 22 of 1999 has resulted in local leaders, both the executive and legislative council members involved in corruption cases. This was due to an incorrect understanding of broad autonomy under Law No. 22 of 1999. General Explanation letter (h) states that:

Autonomy is a broad discretion to organize the administration area that includes all areas of government authority unless the authority in the field of foreign policy, defense and security, justice, monetary and fiscal, religion, and other areas of the authority will be established by Government Regulation.

Other causes due to an incorrect understanding of the content of Article 4, paragraph (2) of the Law No. 22 of 1999 essentially affirm that each autonomous region stands alone and does not have a hierarchical relationship to each other. Though theoretically, the autonomy of policy is always associated with the choice of a unitary state, it means that the extent of autonomy granted to region will never escape from the frame of the unitary state (Fauzan, 2005).

The relationship between central and local government, including the relationship between the provincial government and the government of district/city, is something that is being discussed, because problems in practice often lead to efforts to attract interest (spanning of interest) between the units of government. Especially in a unitary state, a central government's effort to keep control over the affairs of the government is very clear. The reason for maintaining the unity and integrity of the country is one of the reasons why the central government always dominates the implementation of government affairs and has the right to disregard the role of the local government to get involved directly and independently in order to manage and defend the interests of the region. The dominance of the central government over the affairs of government has resulted in the relationship between central and local government, including the relationship between the provincial government and the government of regency/city in the state of unity (*eenheidsstaat*), which is not harmonious

or even be at the point of worrying which raised the idea of changing the unitary state to a federal state (Fauzan, 2010, p. 52).

In some cases, the regent/mayor does not want to attend the invitation of the governor as the head of the province, which shows that there is something “wrong” in determining the model of the relationship between the two units of government.

Problem Formulation

The problems in this study are as follows:

- (1) How is the distribution of authority between the provincial government and the government of regency/city in the governance system of Republic of Indonesia?
- (2) How is the distribution of authority between the provincial government and the government of regency/city in the governance system of Republic of Indonesia in the future?

Method of Approaching

This research is normative (legal research), and the research aims to examine rules and legal principles (Manan, 1999, p. 4; Soemitro, 1983, p. 10). The approach used is juridical-normative and historical. The normative method is intended to assess applicable law governing the relationship and distribution of authority between central and local government. The historical method is used to assess applicable law governing the relationship between the provincial and district/city government and its history.

Discussion

There are two terms of the relationship of authority in government: first, the distribution of government activities; and second, how to carry out the government activities. Before Law No. 32 of 2004 on Regional Government was enacted, distribution issues between the government and local authorities are also set out in Article 7 of Law No. 22 of 1999, which stipulates that local authorities are covering all the authority in the areas of government except politics, foreign affairs, defense and security, justice, monetary and fiscal, religion, and other areas of authority. Setting it is also contained in Article 10, paragraphs (1) and (3) of Law No. 32, which just do not mention the authority of other fields.

The authority of government activities based on Law No. 32 of 2004 is divided into two powers of government activities. They are compulsory activities and choice activities. Compulsory government activities are pertaining to basic services such as primary education, health, minimal life fulfillment, and basic environmental infrastructure. Choice activities are relating to potential options and regional characteristic.

Based on provisions of Article 10, Article 13, and Article 14 of Law No. 32 of 2004, each unit of government, both the central government and the provincial government and regency/city government, has authority respectively.

Based on the Article 13 of Law No. 32 of 2004, the compulsory activities of the local government shall include:

- (1) Planning and development control;
- (2) Planning, utilization, and control layout;
- (3) Implementation of public order and public tranquility;
- (4) Provision of public facilities and infrastructure;

- (5) Handling of health;
- (6) Providing education and human resource allocation potential;
- (7) Overcoming social problems across the district/city;
- (8) Manpower service across the district/city;
- (9) Facilitating the development of cooperatives, small and medium enterprises across districts/cities;
- (10) Environmental control;
- (11) Land services including inter district/city;
- (12) Service population, and civil;
- (13) The general administration of the government;
- (14) Investment administration services including inter district/city;
- (15) Implementation of other basic services that cannot be implemented by the district/city;
- (16) Other mandatory affairs as mandated by legislation.

Based on the Article 14 of Law No. 32 of 2004, obligatory district/city governments include:

- (1) Planning and development control;
- (2) Planning, utilization, and control layout;
- (3) Implementation of public order and public tranquility;
- (4) Provision of public facilities and infrastructure;
- (5) Handling of health;
- (6) Implementation of education;
- (7) Overcoming social problems;
- (8) Service sector employment;
- (9) Facilitating the development of cooperatives, small and medium enterprises;
- (10) Environmental control;
- (11) Land services;
- (12) Service population, and civil;
- (13) The general administration of the government;
- (14) Investment administration services;
- (15) Implementation of other basic services;
- (16) Other mandatory affairs as mandated by legislation.

Of these provisions, as the unit of the provincial and district/city has a mandatory affair with the same number, the only difference to the affairs of provincial government unit shall have the characteristics of cross-provincial and regency/municipality, and compulsory affairs of district/city government include the existing affairs in the district/city.

Based on Article 14, paragraph (3) of Law No. 32 of 2004, division of governmental activities is regulated by government regulation, so that the central government has the absolute authority to divide the government activities. But that must be considered is when the option granting the broadest possible autonomy to government units and district/city as mandated in Article 2, paragraph (3) of Law No. 32 of 2004 will be better in the preparation of Government Regulation associated with the distribution of authority, it also involves the provincial government and district.

On the other hand, it has not determined the criteria of government affairs conducted by the provincial and district/city governments. Determination of the responsibilities and the choice between the provincial and

district/municipal nearly duplicated that it distinguishes the scope of territorial boundaries, and therefore the determination of the household composition of each region is determined by the respective provincial and district/city through an agreement proposed to the government to set out in a law, in recognition of the housekeeping area. Government only sets guidelines or criteria for an affair or a province under the authority of the district/city (Krisnandar, 2006, p. 382).

The Government Regulation No. 38 of 2007 on the Government Affairs Division of the Government, Provincial Government, and the Government of Regency/City is essentially guidance on how the distribution was carried out in their government affairs authority granted by the central government. Based on this regulation also, the distribution of authority of government activities are divided into three groups. They are the government activities under the authority of the central government and government activities which are shared between the provincial government and the district/city government.

Based on the Article 4 of Government Regulation No. 38 of 2007, the distribution of authority between units of government is based on the externality principle, accountability, and efficiency with respect to the harmonious relationship between the central government, provincial government, and district/city governments. Determining the government activities is optional. The provincial and district/city governments have freedom. In carrying out the activities, the government must also meet Minimum Service Standards (MSS) established by the central government.

Arrangements regarding the distribution or allocation of responsibilities between units of government affairs defined in more detail, even in certain cases the authority distribution arrangements set out in the Regulation can be said to be more extensive when compared with the settings contained in Law No. 32 of 2004. In the distribution of governmental authority, the provincial and district/city governments only receive government activities which should be conducted. And if the provincial and district/city governments cannot implement, it is then held by the central government by financing charged to the income and expenditure budget. For matters of choice, the provincial and district/city governments have the freedom to determine the government activities based on the reason to improve the prosperity of the community in accordance with the conditions, characteristic, and the potential in the regions concerned. It is contrary to Article 2, paragraph (3) and Article 10, paragraph (3) of Law No. 32 of 2004. However, if it is connected with the choice of the shape this country is unity, then the widest possible autonomy does not mean that the site is absolute freedom in conducting all the affairs that have been submitted to it, because the real independence in autonomy is relative. And the region has never had a state of freedom.

It is because that autonomy is defined as something that is meaningful freedom or independence (*Zelfstandigheid*) but not independence (*Onafhankelijkheid*). Limited freedom or independence is a form of giving an opportunity that must be justified (Syafudin, 1985, p. 5). Autonomy should be provided sufficient space to carry the freedom to run the government, the independence or autonomy always requires flexibility. In fact, it is normal if autonomy is said to be the essence of independence, but not a freedom (Manan, 1999, p. 26). Autonomy is not a liberation process areas within the meaning of independence (sovereignty apart), or autonomy cannot be interpreted as the absolute freedom of a region (absolute *Onafhankelijkheid*) because autonomy is a process to provide an opportunity for the area to be developed in accordance with the potential they have. Thus, autonomy must be meaningful as a way to optimize any potential local, natural, and cultural environment. And optimisation is not exploitation, but rather a process that allows the region to be able to develop itself, and change people's lives for the better areas (Lapera, 2001, pp. 154-155).

In addition to this, the area has been given autonomy, even if the predicate broadest autonomy is still burdened with the obligation that was conducted, the obligations that are vertical and horizontal. Obligations, which vertically mean that although the area has been given the right and liberated to manage and take care of the interests of its people, the region still has little obligation to respect and implement policies that have been outlined and defined by the central government and regional policy in issuing rules and regulations as a manifestation of personal freedom, should always not be inconsistent with the laws and regulations in accordance with the principle of a higher hierarchy. It is a consequence of the unitary state option, as talks on autonomy will always be closely associated with the concept of a unitary state. Obligation that is horizontal means that any provision of governmental affairs submitted to the local government should be implemented and in accordance with the purpose of the gift, the improvement of public services (public service), local independence and well-being of local communities.

Notice the above description, then in the future, the distribution of powers between the government affairs unit of government must involve the local community components represented by the regional government. Engagement is meant to be, what will be contained in legislation that governs the distribution of authority, really is a reflection of the area. This is in accordance with the principles of democracy in governance.

The provincial government has a very important role in making income of budget of regencies/cities, because the governor serves as vice-central government to provide guidance and oversight to the district/city.

Coaching is basically a government obligation on all local government units of both the provincial and district/city government, including the village. Implementation of activities, intended for governmental affairs units has been submitted to the government as the implementation of the principle of autonomy can be implemented in line with the objectives to be achieved, namely an increase in social welfare, and the fulfillment of the aspirations of the growing importance and growing interest in local communities efficiently and effectively in accordance with the legislation.

While monitoring the implementation of government affairs conducted by the provincial government to the district/city government intended that the implementation can be carried out in their government affairs as well as possible, so that the purpose of a government affairs submitted to the authority of the government of regency/city will be achieved, such as the implementation of business effectively and efficiently, as well as the achievement of efficiency and effectiveness.

Supervision is an intermediary of regional autonomy, which can be likened to the ball as the ball theory. If the supervision is done strictly by being drawn so tightly, then breath independence and freedom will be reduced. And there is no freedom of region. If there is no supervision, there is no the autonomy but sovereignty given to region. Therefore, the relationship between control and autonomy must be balanced. Supervision should not result in a reduction or the evacuation values of decentralization based on the 1945 Constitution and Law No. 32 of 2004 (Krisnandar, 2006, p. 412).

Supervision system based on Law No. 32 of 2004 covering the first, all draft provincial regulations governing local taxes, levies, and spatial planning should be evaluated by the minister of the country, and the draft regulations of the district/city governing local taxes, levies, and land use spatial planning must be evaluated by the governor.

Based on the description and the above provision, it is related to the relationship of authority between the provincial government units with the district/municipal budgeting in the district/municipal, provincial government which represented by the governor has a position that is crucial to finance the implementation of

the regency/city. That is because each of the draft rules of the district/city budgets mutually agreed by the regent with the legislature, including the draft regulation regent/mayor on budget breakdown before specified by the regent/mayor is no obligation to be presented to the governor for an evaluation period of three.

To ensure the implementation of government affairs' sustainability in the future, within 15 days when the draft local regulation is accepted, the interior minister and the governor should have done the evaluation. Necessity is the level of implementation, often cannot be full fill. Governor will find difficulty in the evaluation, because of the evaluation of the draft regulations on budget every year almost at the same time, while the draft budget must correspond to a relatively large number of regencies/cities that exist in the province. Issues that need to be scrutinized associated with the relationship between the provincial authorities and the government of regency/city are related to the short-time limit which is owned by the governor to conduct an evaluation of the draft regulations on budget; provision should be anticipated in such a way that the governor does not find difficulty in doing evaluation because many draft local regulations must be evaluated. Therefore, the order and discipline in the discussion of the draft budget are a necessary condition that must exist.

In addition to the above, Law No. 32 of 2004 does not give any role to the district/city government when provincial government prepares and establishes provincial budget. These conditions in the future need to be set so that the representation of local communities (namely: House of Representatives District/City) and also head of district/cities can be involved in the preparation of the provincial budget and expenditure.

Notice that the relationship between the provincial government and the government of regency/city in the budget in the future can be illustrated in the Figure 1.

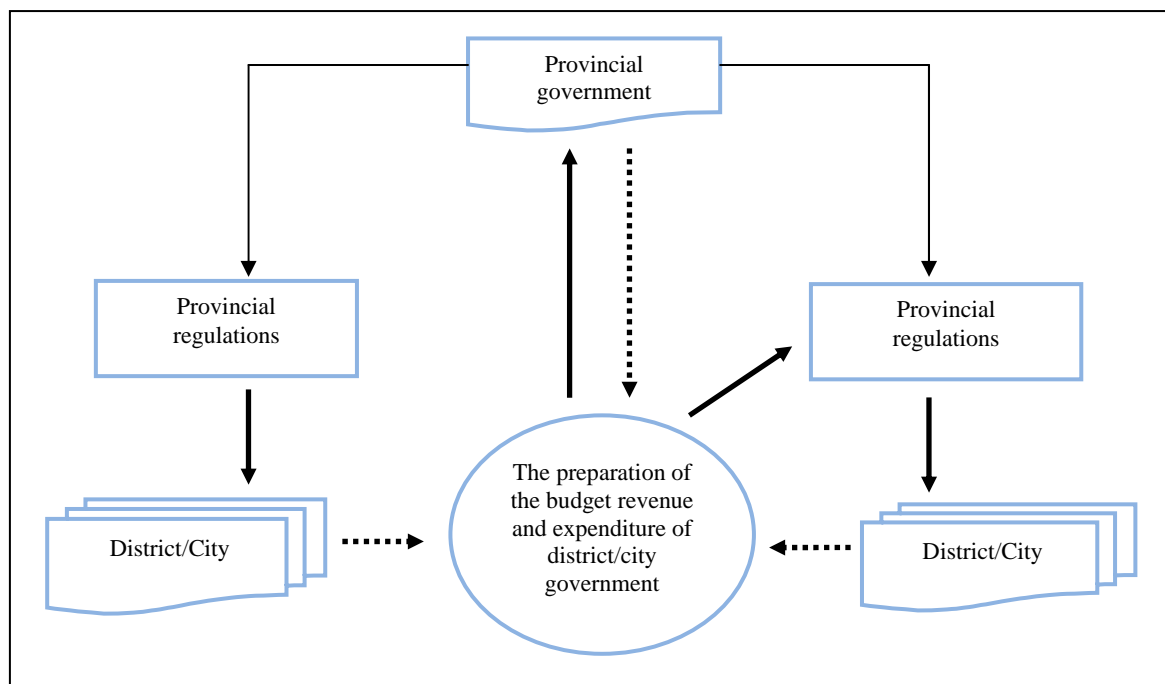


Figure 1. The relationship between the provincial government and the regency/city government in the budget.

The relationship between the provincial and the district/city governments in local elections is that the district/city is only at the stage of inauguration of regional head/deputy head elected.

While related to the election of the governor, the inclusion of regency/city government as an institution,

“only” as a “supporter” of election of governor/deputy governor, the support can be realized by taking help from the aspect of the availability of human resources and the involvement of the government and district/city.

Conclusions and Suggestions

Conclusions

Based on the results of the studies mentioned above, it can be concluded as follows:

(1) The relationship between the provincial authorities and the government of regency/city in the distribution of authority in local government affairs of governance in Indonesia includes:

(a) In the area of government affairs at the present time, determination of compulsory government activities and choice government activities do not involve the local government;

(b) In the area of budgeting, the relationship between the provincial government and the government of regency/city shows that the provincial government has a very significant position, as any local regulation about the budget's plan of regency/city should be evaluated first by the governor. In the case of the evaluation, results are not followed up by the regent/mayor and council, but the regents/mayors still set draft local regulations on local government budgets so the governor can cancel the local regulations and state the applicable local regulations on budget revenues and expenditures last year;

(c) In the field of local elections, the relationship between the provincial government and the government of district/city shows that the role of district/city government as an institution is “only” as a “supporter” of election of governor/deputy governor, and the support can be realized by taking help from the aspect of the availability of human resources and the involvement of the government of district/city;

(2) The relationship between the provincial and district/city governments in the distribution of authority in Indonesia in the future:

(a) In the area of government affairs. In determining the governmental affairs between units of government, both the central government and provincial government or regency/city government involve local government representation that can be represented by the head of region and parliament;

(b) In preparing the budget, provincial central government should involve representation from the district/city (namely: House of Representatives District/City) and the regional head/deputy head.

Suggestions

Based on the above discussion, improvement of legislation on local government needs to be done, particularly in the following areas:

(1) In determining the distribution of authority and government activities that involve the provincial and regency/city governments;

(2) In the field of provincial local budget preparation, which involves district/city government, even if only to provide information, data, and facts needed in the area of improving the preparation of provincial regulations on local budget.

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Sustainable Urbanism, “Domotics” for New Public Space: An Urban Project for the Jiangning District, Nanjing, China

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The article presents a study based on a joint Italian-Chinese research project located in the northeast part of the Jiangning District, Municipality of Nanjing, China. The priority objectives of the project are to identify the guidelines for the proper structuring of new self-sustaining urban spaces based on the logic of energy efficiency and reduced consumption, promoting cultural exchange and social relations through innovative forms of aggregation and self-organization, thanks to present-day digital technologies for information and communication (ICT), which could represent a new concept of “urban domotics” to improve the quality of life starting to “public dimension” of cities. The goal of the project is to shift the focus from the issue of sustainability from the indoor building environment, which includes a series of private micro-interventions, to public interventions by designing urban spaces, based on principles of “carbon neutral” energy efficiency, according to the main theme of the Shanghai Expo “Better City, Better Life”. The article concludes with some reflection about how the integration between urban planning and the design of innovative urban devices and systems could be an opportunity for setting up processes leading to the definition of “enhanced quality in public spaces”.

Keywords: home and building automation, urban domotics, sustainable outdoor spaces, urban sustainability, green energy and infrastructure

The signing in Nanjing in June 2010 of a memorandum of intent for inter-university cooperation between Southeast University (SEU, Nanjing, China) and Marche Polytechnic University, Urban Planning Division (Ancona, Italy) saw the launch of a project of collaboration and research centred on the creation of an Urban Park Area¹. The project for the pilot area, which was picked out by the Southeast University School of Architecture, constitutes the starting point for a broader and more complex study into the features of urban space for contemporary cities, an “urban container” in which technological applications can be used and cultural exchange between the Italian way of life and the Chinese way of life can take place, thus constituting a precious opportunity for fostering the processes of internationalization and reciprocal cultural growth.

The main goals of the project are as follows:

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¹ The project is *Methodologies and Technologies for the Creation of High Sustainable Environmental Contexts Also Available for Disabled People—Experimental Project for the Creation of a “Little Marche” Area in China*, co-funded by MISE-ICE_CRUI for the year of 2010, and promoted by the Italian Ministry for Economic Development, Industrial and Internationalization Department.

(1) Identifying a suitable starting point in public space planning for implementing a systemic view of sustainability in the contemporary city by including features related to energy saving, efficiency and the use of renewable energy within the processes of provision of public services;

(2) Developing strategies for the restructuring of public spaces, starting from the organic and integrated structuring of urban voids—which are present to a high degree in the city—to use as guidelines for the process of regeneration of the urban fabric;

(3) Strengthening interconnections between settlements spread over the territory, such as minor urban clusters and outlying villages, in order to ensure better use of public resources (social services, public transport, healthcare, technical networks and security, waste management, handling of the urban microclimate, water management, management of the street lighting system and of technology networks), as well as to preserve the existing residential real estate heritage, also with a view to developing hotel and tourist facilities;

(4) Promoting cooperation between local Italian and Chinese businesses and public authorities with the aim of setting up new production chains for innovative urban furniture equipped with devices for controlling the micro-climate, managing the street lighting and communication systems and the use of renewable resources, in line with relevant territorial planning and strategies.

Shanghai and Nanjing: Toward “Better City, Better Life”

Nanjing is a city of about 7.4 million inhabitants and is the second biggest economic centre in East China after Shanghai. The metropolis, with its dazzling avenues and chaotic alleys, epitomizes the phenomenon of modern urban development resulting from the country’s vigorous industrial and economic growth. Here too, the vital question is raised as to whether unrelenting urban evolution is capable of offering and improving quality and dignity of life for the population (Marinelli & Pantaloni, 2011, p. 273), and whether such development is compatible not only with the preservation of the rich heritage of the historical city but also with the search for a sustainable environment (Acebillo & Ding, 2007). The Shanghai 2010 Expo, a symbol of China’s intent of switching from a vigorous yet chaotic “quantity-based” model of economic development to a well-structured yet interpretive “quality-based” model, definitively assigned to the city in its totality the additional role of guaranteeing improved quality of life (Hanru, 2005). The theme of the World Exhibition is one of hopes common to all mankind: a better lifestyle arising from the future development of cities on the planet. “Better City, Better Life” expresses the international community’s interest in strategies for sustainable urbanization and development (Koolhaas & Boeri, 2000, p. 332). The exhibition, in addressing the five main themes underpinning the role of the contemporary city, was a compendium of proposals, suggestions, models of cities of the future and harmonious styles of urban life that interlaced the complex issues of integration of different cultures, economic prosperity, technological innovation and interaction between urban and rural areas.

“Full” (Built Spaces) and Voids (Empty Spaces): How to Create Urban Sustainability

The new parameters for quality in the contemporary city are tied to a uniform system-wide project for the city of voids, in other words for the public city. The aim of working on what is defined as “urban void” is that of restoring its identity as a shared space where citizens can meet and socialize, making it flexible and easy to continually redefine and immediately relate to the physical space of the city. Constant transformation of the urban territory has considerably altered the perception and identity of the city as a unified entity with well-defined boundaries and a planned layout (Farr, 2007, p. 157). The new, increasingly complex, disjointed, splintered, and

polluted urban territories we see today are a succession of “full” and voids (Perrault, 2010, p. 52). This state of affairs necessarily leads to a view of the “urban void” no longer as a separator but as a “space for opportunity”, transforming the conventional negative economic, social and emotional connotations of the idea of “void” into decidedly positive ones. In contrast to the urban fabric which is conceived of as a compact physical mass, in metropolitan areas “voids” constitute a structural feature. If this is so in the case of medium to large Continental European cities, such a condition is even more to be expected and even more tangible in the case of China’s hyper-metropolises: vast urbanized conglomerations that spin out from the central core city in a random way, gradually decreasing in density and fostering the rise of fragments of city, whereby it becomes possible to perceive the metropolis no longer as a physical mass, but rather as a “territory” (Rogers & Gumuchdjan, 2000). Metropolitan Nanjing is a typical contemporary city with alternating built spaces and voids. Redesigning of the area would bring about regeneration of the metropolis and provide an opportunity for planning efficient public spaces guaranteeing environmental and ecological continuity, which is the key to the successful environmentally-sustainable future growth of contemporary cities (see Figure 1). Focusing on an overall view of voids in the metropolis necessarily involves a more general consideration of the overall sustainability of the urban space (Clément, 2004).



Figure 1. Structuring urban voids (empty spaces) for the sustainable future growth of contemporary cities.

The JDXT Masterplan for Urban Regeneration²

The masterplan details the complex programme of interventions and singles out those areas of the city that are to guide the virtuous processes of transformation and regeneration of the urban tissue. The set of planned interventions, progressive in space and gradual in time, is defined by the synergic interaction between four main systems:

(1) Pedestrian mobility and bike lane

The overall transport system means of access to the Park in pursuit of an intermodal approach to public and private transport. The pedestrian and bike lane extend widely serving the entire areas of the Park, and the new blocks around Green Island, thereby guaranteeing accessibility and a maximum travelling time on foot of 20

² The Jiangning District (JDXT) Masterplan, currently in start-up phase, has been developed in collaboration with Southeast University, Nanjing.

minutes between intermodal nodes;

(2) Green pattern and ecological network

The new extremely widespread system of ecological pathways within the consolidated urban fabric helps to preserve biodiversity in urbanized contexts, and constitutes a system of “complex structured sections” (Kipar, Cassatella, Aggarwala, Kuhn, Raffestin, & Wines, 2011) with its own physical dimension, multiple functions, and opportunities for the city user (see Figure 2);

(3) Energy network (water treatment and recovery, solar energy collection and conversion, wind power, and geothermal power plants)

The networks of renewable energy resources, such as water, wind and sun, become the driving force behind the transformation of the city and the landscape;

(4) Digital network and smart nodes: “urban domotics” and “augmented reality” for public spaces

The project makes use of digital systems for the computerized management of parking areas and sustainable mobility, and the use of digital networks allows monitoring of movement within the city in a “smart” sense, providing the city user with a variety of innovative services, such as smart parking and bike sharing, real-time location of position, viewing of maps, itineraries and information about the entire area—also by “augmented reality” devices, assistance for users with disabilities and for elderly safety control.

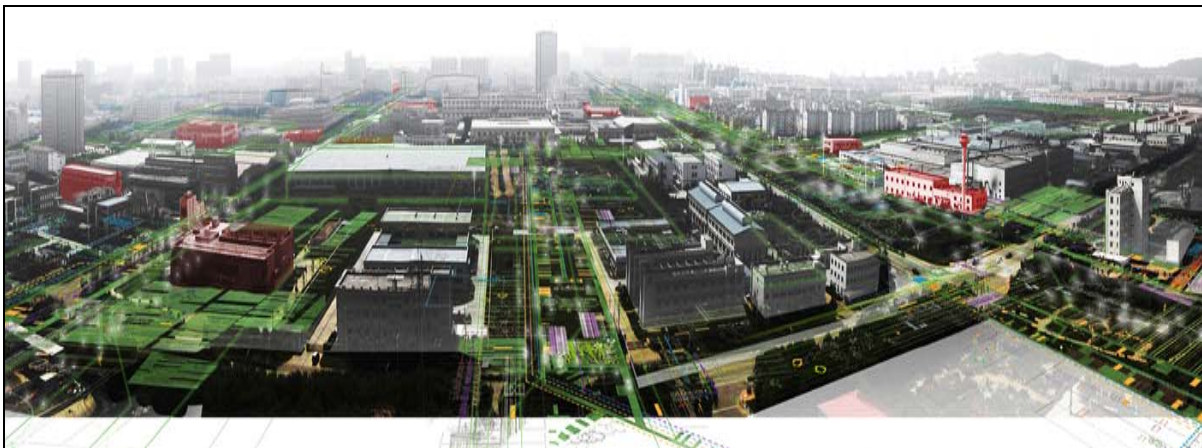


Figure 2. The “manifesto” of the Jiangning district: green spaces and ecological-digital network.

The Green Island Area

The Urban Park constitutes a prototype for the testing, evaluation and implementation of the guidelines for designing public space in line with the new parameters for social and formal quality. Located at the edge of the built-up area, it concerns a total area of urban fabric of about 103 km² (see Figure 3). It provides an opportunity for the testing ICT (information and communications technology) applications for public spaces for:

- (1) Information, telecommunication, interaction and social relations;
- (2) Intelligent energy control and management;
- (3) Security concept for planning and design of landscape and urban areas.

Wi-fi area, elements of urban furniture and fully customizable interactive devices made available to city users in order to promote active participation, interaction and communication, so that users can take possession of the public space itself and “interact” with it.

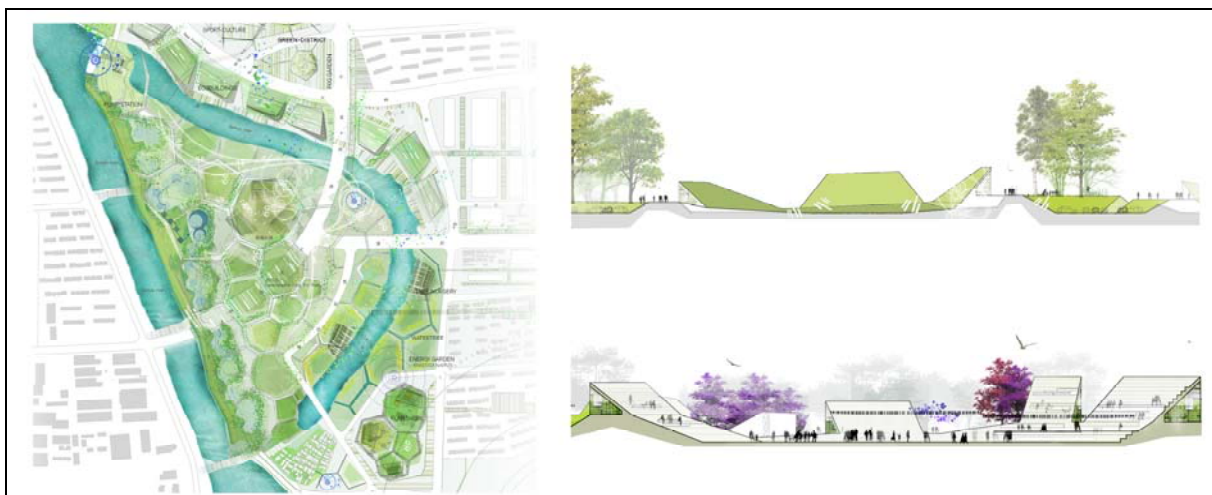


Figure 3. Green island area: An urban park for testing the integration of environment protections technologies and urban domotics devices.

Domotics, Energy Saving, and Citizen Participation in the Restructuring of Urban Voids

The term “domotics”, from the French “domotique”, derives from the combination of the Latin “domus” (with the meaning of manor house) and the French “informatique” (which in turn derives from the combination of “information” and “électronique”). This term is coined to describe the field of study that deals with the use of technology to improve the quality of life in the home and in living spaces in general. The field of study is concerned with setting up networks for integration, interface, discussion and exchange of information that link sensors, devices and man (the city user) as smoothly as possible (Foster, 2006, p. 62). In his third treatise, *De re Aedificatoria (On the Art of Building)*, Leon Battista Alberti focused on what he considered to be a fundamentally important principle: “if, in the layout of its spaces, a house is to be viewed as a small city, then a city can be viewed as a large house”³. Drawing inspiration from this interesting idea of osmosis between the concept of home and urban space, this research study project is centred on evaluating the synergy between private space and public space and envisages opening up and connecting the home in relation to the outside world by creating links with the urban public space system at both a neighbourhood and a city scale. In the pursuit of this intent, the concept itself of boundary, both physical and symbolic, between internal and external spaces gradually fades away, becomes blurred and difficult to identify. Consequently, it becomes necessary to redefine the very concept of quality of life, moving on from the notion of “inhabiting” to that of “living”.

The concept “Better City, Better Life”, theme of the Shanghai 2010 Expo, definitively designates improved quality of life as pertaining to the overall dimension of urban quality. Hence, it becomes essential to give prominence to the designing of public spaces, both physical and immaterial, within the processes of urban regeneration, and move on from an approach that focuses on improving comfort in the home (indoor domotics) to a systemic urban project for public spaces (urban domotics) (Marinelli & Pantaloni, 2011, p. 273).

Defining “urban domotics” is most certainly a challenge that many European cities are currently facing (Foster, 2006, p. 62). Today, more than ever, the topic of the human environment is at the centre of the cultural

³ From the treatise of Leon Battista Alberti (approx. 1452), *De re Aedificatoria* (Book I, Chap. 9): “*si civitas philosophorum sententia maxima quaedam est domus et contra domus ipsa minime quaedam est civitas: quidni harum ipsarum membra minima quaedam esse domicilia dicentur?*”.

debate on city life and at the top of the agenda for local and national authorities. Shifting the focus onto systems of urban space based on principles of carbon neutral energy efficiency highlights the fact that innovation can and must regard the methodological aspects not only of production processes, but also of the provision of services (Beatley, 2000, p. 268).

Democracy and Participation for a New Design of the Public City

The present-day cultural climate in China is dynamic and susceptible to constantly changing trends, making the country more responsive and flexible when it comes to trying out innovative forms of social relations and democracy in the management of public spaces, thus giving rise to some novel issues. How can new forms of public space be developed while going through a phase of ever-increasing privatization in urban areas? How can the indiscriminate rise of residential areas and the privatization of the city be opposed? (Mars & Vendel, 2005). An answer to these questions could lie in viewing interactive, intelligent, technological, digital public space as a possible tool that local government authorities could use in order to guide citizens in the process of developing a sense of active, responsible, and therefore “sustainable” citizenship, thereby acknowledging information and communication as cardinal values for participatory democracy in the contemporary city of Nanjing (McGuirk, 2010). Improvement at levels of information, knowledge and sharing is essential for trying out new forms of participatory democracy that are not limited to the passive aspects of communication and information but, rather, aim at the collaborative construction of urban policy guidelines. The experimental process embarked upon in Nanjing presupposes that the “public space crisis” can be overcome if the space itself affords the opportunity of developing a sense of citizenship, democracy and civic responsibility, together with active citizen participation in the decision-making process connected with transforming the territory seen as an asset belonging to the whole community (Foster, 2006, p. 62).

All these also serve to promote organization amongst social groups, communities and different social classes, thus encouraging self-governance and a process that leads to an increasingly complex social structure through self-help and responsabilization of the members of the community.

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The Influence of English Law for the Local: A Study on the Administration of Islamic Law of Inheritance in Malaysia*

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English law is the law that is associated with British Empire and Malaysia happened to be under British sovereignty for almost 150 years. The principle of British authority is to not interfere with local customs and religion subjects, which were considered local personal matters. Nevertheless for the application of the law, English judges had to honour the ecclesiastical jurisdiction in order to interpret the “local law”. This, somehow, led to application of certain principles of English law in the local subject matters. As a result, some of the English laws were enforced to local people including Muslims, which indirectly deprived the application of Islamic law. For instance, the court allows the desire of the deceased in dividing his estates although it goes beyond one-third of the estate which contravened to the principle of bequeatable-third. On the contrary, the application of English law in procedure of the administration of inheritance law have also benefited the Muslims which makes the process of claim smooth through probate and letter of administration. Therefore, this paper aims to analyze the weight of English’s law influence in Malaysian law of inheritance especially for Muslims, its sustainability and challenges from past hitherto.

Keywords: English law, inheritance, Islamic law, *faraid* (Islamic inheritance), Malaysia

English law was also known as Common Law, which has been enforced in England since 12th Century. It was introduced in Malaya during the occupancy of British in the country. In general, Common Law was defined as “general law” or “the law for all” that was applied to every region under English sovereignty along with several principles and maxims extended, including to Malaya, for the benefit of local people.

Essentially, there are two elements that absorbed English law into local law: first, by codifying statutes of the same law which has been practiced in England; and second, by following past judgement on the similar issues. The latter practice was recognised as the doctrine of “judicial precedence”. As a result, both factors work hand in hand in applying the principle of Common Law in the local court. In this case, substantive codes and precedent findings become two essential elements which import the law in the country. The former operates as an application of static theory whereas the latter as a dynamic premise. In this case, the concept of law is not merely deduced from certain phrase of statutes, but also constructed from reasons and findings of learned judge. Thus, judges play an important role in the development of Common Law through observation in particular cases. The findings of the court as well as interpretations given will bind later cases that stand on the same point of law. As such, it established influences of English law for the local in the country.

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The History of Common Law in Malaya

In early administration of colonial offices in Malaya, British government applied the “Rules of Natural Justice”. This rule was developed under common sense of justice, which tended to achieve fairness in the minimum standard of fair dealing for both parties. As the matter of fact, the principle has been established in England since 1320, whereby judges have to reach the standard of equality in the judgement. To achieve this, the practice of natural justice in Malaya was clearly underlined through Section 16 of *Instructions of Sir George Leith* dated March 15, 1800 (Clodd, 1948; Tan Soo Chye, 1950). Apart from expanding the application of natural justice, the instruction also works as guidance for judges while handling local matters.

Apart from the instruction, the applications of English law were also influenced by interpretations made by judges, either in translating certain phrases, construing statutes, or elaborating on particular circumstances. As learned judges were well graduated under England law, arguments and situations were perceived in the method of English’s law perspectives, as well as their interpretations on scenarios and cases. In other words, their considerations always incline toward familiarity of law and procedure that have already implanted in their minds, hence resulting to the influence of English law in the local matters.

Apart from the absorbing of the English law, judges must also take notes on the aspects of customary practices and beliefs. It was a principle of ecclesiastical jurisdiction that customs and beliefs of local people should be acknowledged and respected. Thus, the enforcement of English law should consider the local adherences and their customs, to ensure that the right laws are applied on them. In this case, there are laws that can be imposed to all people, irrespecting of beliefs and customs, and meantime, there are also laws which are only suitable to particular group of society. The former is law which operates for all people and any transgress of the law will put society as well as country in chaos and unstable (Hooker, 1969; Mills, 1925a). While the latter refers to specific law which is associated to particular beliefs and customs. The latter is more personal and focuses more on particular group, and differs from one community to another, and any transgress of the law does not affect the other community. Therefore, the latter law should be free from other interferences of any foreign laws, and is applied entirely to such community. In respect of the above scenario, *English-Dutch Treaty 1824* (Hooker, 1969) had underlined a principle of not interfering the local personal matters of which the law for the community is their local laws. The principle rule has been recognised as ecclesiastical jurisdiction. It was enforced in the memorandum made by Sir Stamford Raffles and Temenggong of Johore in 1823 under the *6th Regulation Rule* which provided:

6th. In all cases regarding the ceremonies of religion, and marriages, and the rules of inheritance, the laws and customs of the Malays will be respected, where they shall not be contrary to reason, justice or humanity. In all other cases the laws of the British authority will be enforced with due consideration to the usages and habits of the people. (O’Brien, 1891; Mills, 1925a)

The principle of non-interference into local law was a gesture of respect to local practise, which clearly aimed to ensure reason, justice and fairness. In this case, Sir C. J. Benson Maxwell had stressed:

Mahomedan and Hindoos, their law are part of their religions, and that the Charter includes the former when it mentions the latter... to such modifications as are necessary to prevent it from operating unjustly and oppressively on them... it would be impossible to apply our law to Mahomedans.

It is obvious from the above judgment that the local beliefs and customs were part and parcel of justice considerations. It also portrays that English law cannot be applied entirely, as local community also has its own

rules and legislations.

In inheritance, the starting point of English law's influences were resulted from the lacunae in the law of procedure, which was deficient in provision pertaining to letter of administration and probate. Based on report from J. Dickens, he clearly pointed out the difficulty in trial of inheritance without gratifying the lacunae:

The law of nature gives me no precepts respecting the right of disposing of property by wills and testaments, the rights of succession and inheritance, and the forms and precautions necessary to be observed in granting Probates of Wills and Letters of Administration to Intestates' effects. (Winstedt, 1944)

The similar difficulty had been pointed out by the other judges, such as Phillip and Robert Farguhar (Braddell, 1932). For them, the local law does not provide adequate resources and guidelines in the process of administering inheritance.

As a result, under the 1st Charter of Justice 1807, the procedure of English law which guides the forms and precautions in granting Probates of Wills and Letters of Administration was applied by the Recorder Court (Clodd, 1948; Mills, 1925a). The regulations affected all citizens and nations, irrespecting of their beliefs or customs. The law has its retrospective effect, which covered all civil applications including before 1807 (Hooker, 1982; Foong, 1994).

Common Law Statutes Pertaining to Inheritance

In early days of Malaya, British government had divided the country into two different regions: Straits Settlements and Malay States. The separation of regions reflected to different jurisdiction of law, where the former acknowledged the English law as *lex-loci* (the law of the place), whereas the latter considered the personal law as *lex-loci*.

Straits Settlements

Having said that English law was *lex-loci* here, the application of Common Law occurred in Straits Settlements was almost entirely. At this period, English law of inheritance was applied based on the *Indian Act XX of 1837* (Hooker, 1969). Similarly in the application of wills, the *Wills Act XXV* was introduced and passed on October 8, 1838, later was known as *XI's Ordinance of 1902*. The origin of the act was based on the *Statut & Wm. IV and I Vic. c. 26*, and the *George IV Act 85* based on the law of distribution of England. The *1838 Act* was also referred in the case of *Tengah Chee Nachias v. Nacodah Merican and Others*. Apart from the statutes, there were also precedent cases from India which were referred regularly. For instance, in the matters pertaining to transferring estate, local case *In the Goods of Cauder Mohuddeen (1870)* and *Haleemah v. Bradford (1876)* followed the remarks which were given by Indian court.

It is obvious that the *lex-loci* of English law took the domination of Common Law in the region. As such, the distribution of estate mimicked the English law, hence causing conflict to Muslim decree. For instance, the law recognized an adopted child to receive inheritance as the rights of biological child. This is totally against the rule of Islamic law. Apart from adoption, non-Muslim heir was also recognised as legal heir for Muslim deceased. Referring to a case from Singapore High Court in 1869 (CO 273/74), the court had recognised non-Muslim as legal heir, contrary to the principle of parity of religion in Islamic law as a condition to inherit. The decision was based on the colonial stand that the English law was the law for the colony since 1826. Ironically, the application of the law was in contrast with the approach that has been underlined during the early days of the coming of colonial to not interfering with local beliefs and practices.

Similarly in the case of wills as *In the Goods of Abdullah (1835)*, the court accepted the desire of the deceased to transfer the whole of his assets by wills, though it contravened to Islamic principle. However, the judge interpreted the desire of the deceased as lawful and went well with the law applied in the region. So, the will was decided to be valid and enforceable (Ibrahim, 1979), regardless of the principle in Islamic law that only one-third of the estate could be distributed under the method of will (Sheridan, 1961). The influence of English law was also apparent under bigamy marriage, in which Sir Benson Maxwell in his report to British Secretary has stressed the difficulty in the implementation of Islamic law within English law of inheritance, as it was said:

It would seem very difficult, for instance,... to declare the eldest son of a Mahomedan not to be the heir, because his father had two wives at once, and he was the son of the second marriage. But whatever degree of accommodation might,... the foundation of the law remains the English law of inheritance.

Based on the above discussions, it is clear that the implementation of English principle was so overwhelming within the Straits Settlements. It also proved that the doctrine of ecclesiastical jurisdiction which was applied was so narrow. The influence of English law took place under various methods such as by substantive rule, judicial precedent, or interpretation made by judges and in the law of procedure.

The first substantive law for Muslim was clearly provided in *Mohammedans Marriage Ordinance No. V/1880* (Hooker, 1988). The Ordinance consists of law of marriage, divorce, inheritance and excetras. The inheritance matters were printed in part III of the Ordinance, under the title *Effect of Marriage Toward Property* (CO 274/3). Section 27 (II) of the Ordinance guaranteed that nothing of the provisions should interfere a Muslim from transferring his property under Islamic law. However, it was an irony when the law was interpreted in opposite understanding that Muslim has to declare his stand to follow the Islamic law in distribution of inheritance. Without the declaration and a Muslim died intestate, the distribution will follow an English law (*Ong Cheng Neo v. Yap Kwan Seng, 1897*). In other words, the condition of *lex-loci* law in the Straits Settlement had recognised the basic law for the people as English law (CO 274/3).

Therefore, the provision of English law was provided in the Ordinance. It underlined that every Muslim child will inherit in equal allocation per capita and for grandchild per stirpes. The rights for spouse are also not in sync with Islamic law as well: if there are no children, a husband will get one-third of the property. However, the husband will receive the whole estate if there is no heir at all (CO 274/3). Meantime, if a husband dies, wife will get one-third if there are children or next of kin, and a half if there is wife alone (CO 274/3). These underlined provisions strictly contravened to Muslim's inheritance law (*al-fara'id*) as the share for husband basically is either a quarter or half, while the share for wife is either one-eighth or a quarter, with or without children (*Re Mutchilim, 1960*). Nevertheless, the Ordinance also provided the phrases that are synchronized with Islamic law. For example, wives in polygamy marriage will share the share among them equally (Braddell, 1932), and only four legal wives will inherit the property (Balan & Salim, 1984).

Resulting of the conflicts, the *Ordinance of 1880* was amended for several times to comply with the Islamic law, such as *Mohammedans Ammendment Ordinance No. XXV/1908, No. 26/1920, and No. 26/1923*. In the new provision, Section 27 was re-phrased to suit with the Islamic law which stated that if someone dies intestate after January 1, 1924, the property will be distributed according to Islamic law, unless it contravenes to customary practice. In this case, it seems that the Ordinance acknowledged the customary practice at higher level in comparison to Islamic law. Thus it was no wonder that in the new ordinance, the law permits

non-Muslim heir to inherit the property of Muslim deceased (Ibrahim, 1995). The same proviso was reserved in the *Muslim Ordinance of the Law of the Straits Settlements 1926* (Section 27).

From other perspectives, the court has own jurisdiction and liberty in implementing the law. The influence of English law is still adhered as the court has liberty in issuing probate or administration letter to other next of kin after a husband dies, rather than a wife (Section 30). While Section 31 has provided that after a wife die, a son is a foremost candidate to receive probate or letter of administration, comparing to other heirs, for example, husband, daughter, parents, or siblings. Priority will be given to male over female heirs if they are at the same level of equivalence. The Ordinance was amended again in 1934 under the *Chapter 57 Revised Laws of the Straits Settlements 1936*, which known as *Mohammedans Ordinance 1936*. The Ordinance was put effective in Penang, Malacca and Singapore until 1959, two years after independence (Nasoha, 2004).

Apart from the judicial precedent and substantive law, the process of getting evidence and its binding to the court is another issue of influence factor. Courts have jurisdiction to consult for evidences and explanations, either from an experts, such as Muslim scholars, or from the book, such as the *Koran* and traditions (*Tijah v. Mat Ali, 1886*). Even though the verifications are not tie judges, the given evidences have assisted judges in comprehending the case in proper manner (*Teh Rasim v. Neman, 1919*). It was stipulated in the Section 29 of *Ordinance of 1926* that judges have liberty in referring to any *Koran* translation, Book of *Mahomedan Law*, *Minhaj et-Talibin*, and *A Digest of Mahomedan Law* (CO 274/17). In 1934, another reference was added entitled *Anglo-Muhammadan Law* (Wilson, 1912). These evidences will aid judges in their verdicts as were stressed in *Syed Ibrahim bin Omar al-Sagoff lawan Attorney General (1948)* that the additional references will provide judges with sufficient information pertaining to the Islamic law.

Notwithstanding that the consultation for evidences and amended statutes have already been taking place, the influence of judicial precedent still affects recent cases. For instance, the judgement and principle that were *In the Goods of Abdullah (1835)* remain binding the later cases until 1990s, as elaborated *In the Estate of Shaikh Mohamed bin Abdul Rahman bin Hasim (1974)*. The influence was due to the enforcement of the *Civil Laws Act 1956*, as well as the implementation of the *Muslim Law Enactment 1959*, in which both statutes still recognised the application of English law principle. In fact for Malacca and Penang, the *Muslim Ordinance 1936* (Chapter 57) is still put into force, including Parts I and III which consist the provisions of wills and inheritance (Section 171 (2) & 172 (2)). The provisions have only been repealed in 1991 for Malacca by Section 78, *The Administration of Islamic Law Enactment of Malacca No. 5 Year 1991*, and in 1993 for Penang by Section 110, *The Administration of Islamic Law Enactment of Penang No. 7 Year 1993*. It shows that even after 34 years of independence (Ibrahim, 1979; Yaacob, 1994a), the principle *In the Goods of Abdullah (1835)* is still followed and giving its influence.

Malay States

In the Malay states, the sovereignty of Malay Sultanate was respected as well as the application of local law. Thus, the law of the land is the Islamic law and customary practices. The application of English law has to be acclimatized with the local practice, by giving extra consideration on communities' tradition (Balan & Salim, 1984; Hooker, 1988). As a result, personal law was respected and English law was applied only in the matter of administrative law, provided it does not interfere with personal beliefs (Hickling, 1987; Maxwell & Gibson, 1924). All those parameters were in line with the *Treaty of Pangkor 1874* as well as *Treaty of Federation 1895*, in which the local beliefs and practices should be valued.

Therefore for Muslims, Islamic law was their *lex-loci*, which should be applied exclusively in their personal matters. Meantime, the role of Muslim scholar as an expert in the law was mostly involved in the trial (*Teh Rasim v. Neman, 1919*). As in the matter of inheritance, the roles of Muslim scholar or Kathi were to determine the legal heir as well as to ascertain the share of them under the law (CO 716/1), as clearly elaborated in *Re Haji Pais, decd. (1928)*. Apart from these, Kathi also had to give evidences on any provision which was related to Muslim's personal law, such as on the issue of ownership, distribution of property after divorce, endowments, wills and gifts (CO 273/302). However, the evidence was only reserved in the scope of "advising" rather than as "witnessing", in which the former did not bind courts to follow. More to the point, there was also provision for the court to consult State in Council in the matter of religion and customs (Ibrahim, 1985), as provided in Section 2 of *Muhammadan Law and Malay Custom (Determination) Enactment 1930*. The Council was led by the Sultan and such advices should bind the court.

However, based on past practice, there were problems occurred in determining the exact term for "local law". There were two possibilities in terminology, either Islamic law or customary practice. In fact, the meaning differed depending on issue of the problem and source of such particular issues. Thus, case has to be engaged on the right source of jurisprudence. Conflicts would arise if the wrong source of law is referred. For instance, in the case *Matusin bin Simbi v. Kawang binti Abdullah (1953)*, C. J. Williams has interpreted the term of "racial law" which would be enforced on Malay Brunei as an Islamic law. The decision was based on the provision in Section 14 of *North Borneo Procedure Ordinance 1926*. However, it was provided that the racial law should not contradict to other provisions that were enforced in the state. Unfortunately, the principle of Islamic law was not in sync with the provision in Section 7 of *North Borneo Civil Law Ordinance 1938* (Hooker, 1976; Ibrahim, 1971), which accepted adoption as biological children and considered the adopted child as legitimate heirs. C. J. Williams said in his judgement:

By Section 7 of the *Civil Law Ordinance, No. 2 of 1938*, adopted children are to be treated as legitimate offspring. Under the Hukum Shara'h adopted children take nothing on intestacy but, in my opinion, in this case the Hukum Shara'h must be applied subject to the law relating to adoption in North Borneo. (Ibrahim, 1970)

As a result, the court decided that the adopted children in this case, consisting of two sons and a girl, were to get residuary of the estate (*asabah*), while the wife of the deceased obtained one-eighth of the shares, calculating that there were children with the deceased (Ibrahim, 1964). The case portrayed an example in the customary law that when a contradictory occurred between Islamic law and customs, the colonial court always prefers to follow customary practice rather than Islamic law. Meanwhile in a case of customary tenure, the perception of an English judge pertaining to the issue was clearly elaborated in *Shafii v. Lijah (1949)* as below:

It seems to me clear and I accept the evidence of Lijah accordingly, that the deceased Abdul Majid acquired this property for the benefit of his widow and adopted daughters. He did not contemplate the administration of his estate in accordance with the inheritance scales contained in Shafii Mohammedan Law. He intended some form of local customary law to apply, although he was probably quite vague as to detail or principles. Therefore... I distinguish the two Adats and rule that the Adat Temenggong should apply.

It is obvious that under the Common Law, the court was highly reflecting on the intention of the deceased. Although the personal law was a subject matter, the desire of the person was still taken into consideration by the court and hence, favoured the customary practice. The similar approach was decided in the case of *Re Tiambi (1904)* (Reay, 1929), when the court determined that the debt of the deceased which took place during

his bachelorhood or widowhood shall be put on the shoulder of his maternal kindred as per matrilineal law ruling.

Based on practices, it was apparent that most of the application of customary laws occurred in the matter of customary tenure. The Islamic law is only applied on non-customary land. The scenario is analogous to that the law always follows the land, rather than the people's faith. The situation can be seen in the case of *Indun v. Haji Ismail and Others (1937)*, which is said: "The only land which can now descend according to custom is customary land coming within the *Customary Tenure Enactment* (Chapter 125). As regards Malays the *Muhammadian* law governs the distribution of non-customary land" (Willan, 1941).

The recognition of customary law above was an outcome of the written law (Chapter 125) which stressed on the application of customary ruling. As a consequence, customary tenure in Negeri Sembilan, Malacca, and Sabah is still enforced till these days (Winstedt, 1934; Willan, 1941; Mills, 1925b; Doolittle, 2003). In addition, the application of customary law was also acknowledged by the *National Land Code 1965* and *Probate and Administration Act 1959* which read together with Part III of the *Small Estates (Distribution) Ordinance 1955* (Act 98). The application of these statutes was obviously utilized in the case of *Dato' Menteri Othman bin Baginda & Anor v. Dato' Ombi Syed Alwi bin Syed Idrus (1981)* and *Tijah bte Hassin v. Pentadbir Tanah Daerah Alor Gajah & Anor (1994)* (Syed Hassan & Cederroth, 1997; McAllister, 1987). In a nutshell, it seems that the application of customary tenure always deprives the Islamic law.

Actually, the foundation of English law was established through the *Civil Law Enactments of 1937*. It was provided that English law as enforced in England in 1937 shall be applied to local, in cases where no specific legislation has been enacted. The *Civil Law Enactments of 1937* was extended to Unfederated Malay States in 1951 and five years later, the jurisdiction was practiced in the Federation of Malay States through *Civil Law Ordinance of 1956*. Sabah and Sarawak accepted the Ordinance in 1971 which was expanded to the states under the *Civil Law Act 1956*. Based on the *1956 Act* as well, the applications of English law have been enforced to the whole country, as per the law in England on April 7, 1956.

Apart from the influence of English law, there are some other lands under the conditional holding that was not in line with Islamic law. For example, the *Group Settlement Act 1960* has been underlined on a special regulation that limits the ownership of the land. Section 14 of the said Act (Amendment 2002) has provided that the rural area lands have to be alienated and hold together by not more than two owners. Consequently, some of the deceased's heirs could not inherit the land as stated in the Islamic law if the numbers constitute more than two heirs. The provision is clearly defeating the rights of the other heirs in inheriting the land. To overcome the situation, the legal heirs have to reach consensus to appoint two of them as their nominees who will work as a manager for the benefit of all. At the end of the case, the profit from the land will be distributed according to their share in *al-fara'id* with consideration of giving extra disbursement to the appointed manager.

On the other hand, lands which are neither under the *Group Settlement Act 1960* nor the *Customary Tenure Enactments 1960*, are following the rule stipulated in Islamic law. In fact, Islamic law was considered as the law of the land in most of the Malay States (*Shaik Abdul Latiff v. Shaik Elias Bux, 1915*), and the supremacy of the law was recognized in Johor, Kedah, Kelantan, Pahang, Selangor, and Terengganu. The same approach was applied in the matter of personal status which does not involve lands, thus the application of Islamic law was followed entirely. For instance, the enforceable wills are applied within one-third of estate as decided in *Shaik Abdul Latiff v. Shaik Elias Bux (1915)*. Thus, wills that give preference on certain heir as well as wills that disburse on the whole estate were considered invalid and unenforceable, except the other heirs give

their consent as was decided in *Siti v. Mohamed Nor (1928)* (Yaacob, 1994b). Moreover, any illegal condition for the application of wills was also void as decided in *Saeda binti Abu Bakar & Anor v. Haji Abdul Rahman bin Haji Mohd. Yusup & Anor (1922)*. In the case of nomination, a nominee stands as a trustee for the benefit of the other heirs (*Re Ismail bin Rentah, 1939*), rather than takes the estate as his own. In this situation of which personal status is not including customary or conditional tenure, the application of Islamic law was applied exclusively and following the persons' faith.

Jurisdiction in Administration of Inheritance

Since colonial period, civil courts hold jurisdiction in the administration of inheritance, either to Muslim or non-Muslim. The authority engaged in issuing probate and letter of administration which has been provided in *List 1 (Federal List), of Ninth Schedule of Federal Constitution*. The power was put on detail in the *Administration and Probate Act 1959* and the *Distribution Act (Small Estate) 1955*. In fact, the provision was an extended clause from colonial administration period, such as the *Courts Enactment 1918* and the *Administration and Probate Enactment 1920*. Therefore, the development of law in the administration of personal status from earlier period to present has remained unchanged hitherto. The civil courts hold the power of hearing, while Shariah courts cling to determine legal heirs as well as to ascertain their share under Islamic law as the prior practices.

In the scenario where the estates consist of lands with amount below than two million Ringgits, the jurisdictions are determined as a small estate case. In this regards, the Collector of Land Revenue has jurisdiction in issuing an order of distribution. The flow of administration process at this point was based on past practices, as clearly illustrated in minute from Perak Council on February 28, 1879: "The party claiming the right of transfer or succession shall attend at the Collector's office either in person or by his constituted agent and shall make application for registering the mutation, producing the original lease, certificate, or permit".

The jurisdiction was then underlined in the *Small Estates (Distribution) Ordinance 1955*. The Ordinance permits legal heirs to decide the method of distribution either by following *al-fara'id* or by making consensus on certain calculation. If there are conflicts or problems, the Collector has an authority to consult authorities pertaining to Islamic law of inheritance and Malay customs (Mat, n.d.). All the decisions that were attained before the court were recorded and binding upon them. Therefore, in *Re Mamat bin Dat San & Anor; Mek Som v. Awang Senik (1972)*, the Federal Appeal Court decided that the order of distribution by the Collector was valid and legal, even though involving inheritance to non-legal heir. The decision was attained following the consent of all heirs and thus, it was legally binding them.

Meanwhile pertaining to administration of normal estate consisting of more than two million Ringgits, the jurisdiction lies on the high court to issue letter of administration and probate (CO 274/3). However, the jurisdiction does not affect personal law issues as provided in Section 25 under Part VII of the *Civil Law Act 1956*, of which the application of Islamic law and customs were guaranteed. However, conflict arises in *Re Man bin Minhat (1965)*, when the high court had decided that a nomination was actually a gift, and held the right to take the property. It was against with Islamic principle that a nomination merely stands as a representative of the other heirs, whose responsibility is to distribute the estates under Islamic law. However, under judicial precedent principle, the principle of the case was to bind later cases such as in *Re Bahadun bin Haji Hassan (1974)* and *Wan Naimah v. Wan Mohamad Nawawi (1974)*. It is obvious that the decision is

against the Islamic principle as discussed before, as well as the ruling by the Fatwa Committee under National Council for Islamic Affairs 1973 (Ahmad & Ibrahim, 2002).

The jurisdiction of civil court in the matter of inheritance also includes the declaration of death for Muslims. Based on Section 108 of the *Evidence Act 1950* (amended 1971), Small Estate Unit only accepts the declaration of death issued under the high court. To be more in-depth, one is considered dead under the law, who is under situations which are likely to be declared as dead, after disappearing without any information or details in more than seven years. The similar provision has been found in the *Shariah Court Enactment*, but the jurisdiction of the Shariah court is only restricted under marital issues such as marriage, divorce, and custody. Thus, it was not the jurisdictions of Shariah court as per portrayed by the *Latifah Mat Zin v. Rosmawati Sharibun & Anor (2007)*, which was said that:

However, from the judgment, we do not know whether the contradictory claims over the disputed shares concern the question of gift inter vivos or “*hibah*” or on some other non-syariah legal ground, e.g., under companies’ law. If it was the former, then Syariah Court should have decided whether there was a “*hibah*” in accordance with Islamic law of those disputed shares and then proceed to determine the shares of the beneficiaries, respectively, according to “*faraid*”. If it was the latter, of course the Syariah Court should not embark on civil law to determine the question whether those disputed shares were part of the estate of the deceased or not. That is a matter for the civil Court.

Thus, the operations of Shariah court are truly based on written law, in this case, referring to provisions of federal constitution in *List 2, of the Ninth Schedule of Federal Constitution* (states list). No jurisdiction should be carried outside of the underlining proviso even though involving personal matter, as decided in the *Syarikat Syed Kechik Holdings Sdn. Bhd, Puan Sri Sharifah Zarah binti Syed Kecik Al-Bukhary, Sharifah Munira binti Syed Kechik v. Syed Gamal Bin Syed Kechik Al-Bukhary (2010)*. Based on this argument, it is obvious that the application of personal law in Malaysia still follows past practices, which recognises the legacy of colonial administration.

Conclusions

At the beginning, the acceptance of English law in the early days of Malaya was clearly intended to facilitate the administration of law, in the manner of justice and order. Thus, as English laws were imported to Malaya, the stand of the law has obviously underlined to not interfere with personal matters, such as local beliefs and customs. The intention is found in statutes as well as through agreements among the authority. However, during the application of the law as well as its implementation by means of English’s principles, judicial precedents, interpretations, and jurisdictions have all influenced the local laws to mix with those of English flavours. As a result, it established an English-imposed law to local personal status.

From other perspectives, the influence of English law till nowadays was a result of remnant of the past provision in the current law. As we know, an enforcement of laws was depending on written order. Without the provision, the law cannot be established as well as be enforced by the authority. Thus, as the past regulation remained unchanged, the application of the past law, in this case English law, is still followed. In this case, the jurisdiction in issuing letter of administration and probate of the high court has been maintained as well as in hearing cases of inheritance. Meanwhile, the jurisdiction of the Shariah court has remained at the same level since past days. Thus, some efforts have to be put ahead in order to expand the Shariah court jurisdiction as well as to uplift the boundary in giving interpretation in Islamic subject matter, even though it was not underlined under statutes nowadays.

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Legal Environment of Commercial Usage Application in Vietnam

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The article focuses on the historical legal environment and the present law environment for commercial usage application in Vietnam. It is very useful in commercial life in the Sovietique law country. In Vietnam, customary law has been grown for centuries. Conversely, nowadays its application is not really effective and identical throughout Vietnam. Hence, the article would show that it is necessary to upgrade legal system for using commercial usage efficiently. To do that, the problem will be solved in two steps. First of all, the paper gives an overview about the aspect of legal systems as well as commercial usage in Vietnam over historical period. By the way, the abundance of commercial practices in Vietnam will be made clear. Secondly, the paper will analyze the main current legislative documents regulating the use of customary law. They are the Civil Code (2005) and the Commercial Act (2005). Thereby, there is the fact that the legal base for applying usages is a big gap of Vietnamese laws. Finally, the paper concludes that there should be a formal reasoning system to ensure the establishment of a current legal environment related to the application of commercial usages.

Keywords: sources of law, commercial practice, commercial usage, customary law, Vietnam

Customary law is a source of law in most of countries. In Vietnam where there are many ethnics with diverse cultural life, customary law of each ethnic is not the same and plays different roles in each community. For ethnic minorities in uplands and western highlands of Vietnam, the customary law in each of them is an expression of its fine specific cultural features, and seems to penetrate into the sub-consciousness of its each member and become standards of conduct in these communities. Currently, the market economy development and international integrations require more than ever promoting specific nuances in supplying goods and services. But on the other hand, they require that the general commercial usage or practices shall be recognized. Vietnamese Civil Code of 2005 and Commercial Act of 2005 consist of regulations relating to customary law application. This is one of the fundamental principles of regulating social relations pertaining to private law area. If the customary law application is ignored, many unexpected consequences can be resulted from it, for example, the injustice in dispute resolution or social instability. This is because the customary law is built up from the foundation of human psychology formed generation after generation.

However, it is very difficult for applying the commercial usage because of: firstly, chaos and conflicts among their rules of different communities, and continuously, the unclear and inhomogeneous expression of rights and obligations in commercial usage in comparison with legislative instruments, precedents as well as legal doctrines. Hence, the proving of commercial usage before the court is a big problem along with plenty of

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difficulties and complexities. That is the reason why many judges do not prefer using commercial usage. Though, international integration and globalization induce jurisdictions to apply commercial usage for legal disputes having foreign element. Generally speaking, public international law and private international law are branches of law that contain principles and rules of international customs including traders' commercial custom.

Moreover, the commercial customary law in Vietnam has been interested by many international investments and researchers. That is the reason why a range of books, journals and other papers have mentioned about this issue, e.g., *Recognising Customary Law in Vietnam: Legal Pluralism and Human Rights*—a thesis from the University of Wollongong (Pham, 2011); *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (Gillespie, Pi. Nicholson, & Pe. Nicholson, 2005); or *Customary Law in Forest Resources Use and Management: A Case Study Among the Dzao and Thai People in North-West Vietnam* (Culture Identity and Resources Use Management, 2012). Especially, customary law is always hot topic through the time with local researchers and experts. Some of the highlight books and journals are: *Vietnam Customs* by Binh (2005), *Particularization of Customary Law View According to the Polit Bureau's Resolution Number 48-NQ/TW* by Cuong (2010), or *Laws Implementation and Application in Vietnam* by Doan (2009). Most of them are very up to date, so they would not be valuable sources for the research only, but also suitable for many other studies. Nevertheless, they mostly discuss about features and facts of the customary law. The contents are: What are the rules? Who are related to a case? What is the code of conduct? And how effective they are? Some of them mention about related legal issues and explain how they work in the legal system. Or else, other researches are done only in a small region. Thus, some overview researches of the applications of commercial usage in Vietnamese legal system are really necessary.

For surmounting difficulties in commercial usage application, this study should focus on legal environment relating to customary law application generally and commercial usage application especially. In next, the paper will focus on explaining how the customary law plays important roles in commercial life in Vietnam. This will be described through the historical developments of both legal facts and theories. Then, the question how the current law can adapt the application of commercial usage is answered clearly. Plus, at the end, the last outcome of the paper will be what are better solutions for applying customary law in Vietnam.

To clarify the background of Vietnamese legal environment of commercial usage as well as some problems relating the application, the paper mainly uses the analyzing method. This technique will help drawing up practical and theoretical features then linking them together. In addition, for better results, statistical and comparison means are also used to assist the analyzing process.

Historical Legal Environment Relating to Commercial Usage Application in Vietnam

Perhaps, Vietnam has more changes of legal styles than other countries. Before 40 AD, most likely Vietnam had a specific legal system, but there is no any clear historical evidence about it. In the period of being under northerly dominion and until settlement by French, the Vietnamese law style had been the Far East one. Invading Vietnam, French colonialism had divided its territory into three regions (the North, the Middle, and the South) for ruling and imposing the civil law style on Vietnamese. After the Restoration of Peace 1954, the North had built its laws following Sovietique law style, while the South had still maintained its laws following the French law style. But after country reunification 1975, Vietnamese laws have followed Sovietique law style. Most accepted law styles in Vietnam (except Sovietique law style) dignify the role of customary law (Cuong,

2011, p. 252).

For centuries, Vietnamese has a maxim: “Imperial power laws bend to suit rural customs”. Agricultural life in village communities is a feature of Vietnamese culture. The formation of these village communities originated in reclaiming virgin soil by families. Normally, the members of village communities have blood-relationship and treat one another based on their tradition. The traditional features were shown on rural customs regulating behavioral conduct of village members. Consequently, in feudalism, customs were more superior than the laws promulgated by dynasties, and popularized in regulating the social relations. However, practices of the village communities can be rather different from one another for living unopenedly in the small communities, but remain common features of Vietnamese villages.

There is the fact that most of rural customs in Vietnam are in the branch of civil law. There are a few customs concerning commercial relationships. The professional associations, the capital support association and the financial affair in village communities are customs more or less concerning commercial activities researched by Binh and published in his work named *Vietnam Customs* (2005).

The professional association includes people having the same job in a village. One village can establish some different associations corresponding to its different existent professions. Each association has a chairperson elected by its members or each member in turn plays this role annually. The chairperson manages association activities including:

- (1) Maintaining the job for each member;
- (2) Conserving the affection and gratitude tie-up between members;
- (3) Protecting reciprocally and supporting one another in the association and outside (Binh, 2005, p. 235).

In each association, there is a member who plays the role of a keeper of books and money. The associations differ from the commercial ones. Nevertheless, some of their rules are rather close to the rules of merchant guilds.

The capital support association is an organization without legal status where members help one another with capital or fund. There are many kinds of these, such as filial tontine association, wedding tontine association, New Year’s Eve tontine association, and lending tontine association. But the last one is closest to commercial activities. This one is managed by the banker who invites his friends to organize it and receives funds. Each member subscribes his/her name to the register of the association and undertakes to contribute a part of fund monthly till the end of tontine course. Also monthly, associates come to the banker’s house for negotiating with each other and drawing lots. The member on whom the lot fell has the right to withdraw a sum of money tantamount to 80% of the amount of the savings and loan plan at that time. The rest is distributed to others and for the meeting expenses and host’s fee payments. The members who have not yet withdrawn the money shall continue to meet and carry out the same process for their turn. The banker has the right to withdraw one month amount without contribution (Binh, 2005, p. 232).

Villages’ financial affairs are often made entries in the annual receipts and expenses register which is maintained in most villages. Such register often includes the following accounts:

- (1) Debtor account: public field; public capital; fee; public property selling prices; and money contributions;
- (2) Creditor account: sacrifice expenses; party expenses; worshipping object purchase and temples amending; statement and declaration; and servant fostering and village’s mayor payment (Binh, 2005, p. 218).

Those customary rules are very close to traders’ regulations. But they are quite sketchy because of lack of

care for commercial activities. In fact, in the old society of Vietnam, classes were ranked the order as follows: “the scholars, the peasants, the workers, and the traders” (Trien, Tho, & Tan, 1972, p. 4).

In minority ethnics, customary rules are very rich. There are some rules of typical customary law that have been still valuable, especially in Western highland. Ede’s contract rules regulate that contract can be made verbally. If the contract value is high, each party has to have a representative who normally comes from the family of such party’s wife. The representative has three functions as follows:

- (1) Undertaking to perform each party’s contractual obligations;
- (2) Being the witness;
- (3) Dispute resolution.

Nevertheless, the representative does not have the duty to perform contracts (Nha, Loc, & Phi, 2001). In this customary law, the representative partly plays the role of the guarantee for parties to conclude the contract because each has confidence in the other’s representative. Therefore, the close relationship in the family and village is the key feature making the rules respected. Conversely, they will be not appropriate when applying in commercial context, beyond family or village limitation.

The dispute resolution procedure in the Ede customary law is implemented between the representatives or parties directly. At the beginning, the representatives of parties negotiate with each other for the parties to reach agreement by themselves. If the parties failed to reach agreement, the representatives will make decision and apply remedies. Any party that does not agree with this decision can request the case reviewed by the village patriarch. In case the parties are successful in negotiating, the agreement will come into force. After that, the representatives of parties require the parties to undertake to execute exactly what is agreed between them and not to request the village patriarch once more to review the case.

Whoever breaches the agreement is fined double the amount in dispute. In the circumstance that the village patriarch makes a decision for the dispute, that decision comes into effect immediately. Normally, spoken decisions with clear contents are not complained. The party that keeps complaining about these contents will be liable to a fine (Nha et al., 2001). These procedural principles indicate the close-knit relationships among Ede minority group and the role of trust of the people. However, these principles are difficult to contain commercial dispute resolution in modern life.

When accepting the civil law tradition, customary law is considered as an additional source of law to fill the gaps of statute law. The application of customary law or practice is generalized into legal theories contributing to regulate commercial relations (though still insignificant). According to this system, customs are only applied when there is no any regulation concerned and cannot contrast with any provision of statute law. The customary law is recognized by two elements: (1) the substantiality, i.e., behavioural norm abided by everyone in a certain period of time, as long as it does not affect the interests of others; and (2) the mentality or the awareness of the need for such practices (Cuong, 2010).

These historical issues illustrate Vietnamese people’s profound awareness and sentiment of customs and customary law application in social life. This is an advantageous spirit foundation for commercial usage research and application to solve disputes in civil life in general and in commercial activities in particular.

The Present Law Environment of the Commercial Usage Application

Article 3 of the Civil Code of 2005 provides:

In cases where it is neither provided for by law nor agreed upon by the parties, usage can be applied; if usage is unavailable, analogy of law may be applied. Usage and analogy of law must not contravene the principles provided in this Code.

These regulations show that Vietnamese laws concentrate on using the rules of usage to resolve disputes between parties in commercial relations. Usage is arranged in the second order of priority only behind the agreement between the concerned parties' normative documents promulgated by the State's competent agencies (so-called "laws"). However, the applied rules of usage shall not contradict the principles of the Civil Code of 2005. Therefore, when expressed in informal words, most Vietnamese jurists suppose: Usage can be applied as a source of civil law if it satisfies all following conditions: (1) it becomes common rules, accepted by the majority of members of the certain regional or professional community; (2) it does not contradict the principles provided by the Civil Code; and (3) it is only applied if the disputed relations have not yet been provided by laws or the concerned parties have no any concerned agreement between them (Quang, Net, & Hang, 2007, p. 28).

The second condition said above is an undeterminable condition because the Civil Code of 2005 declares many principles which are at different levels and sometimes cause the difficulty to interpret them in relating to one another. For instance, the Civil Code of 2005 requires that the principle of contract freedom shall meet the following condition: "The right to free commitment, negotiation in forming rights and civil obligations is guaranteed by laws, if those commitments, negotiation are not in breach of laws and social ethics". Whereas, the Civil Code of 2005, Article 11 declares the principle of laws abidance as follows: "The establishment and performance of civil rights and obligations must comply with the provisions of this Code and other provisions of law". While most jurists think: "Obeying the laws is a form of implementing the laws, in which legal subjects restrain from performing activities prohibited by the laws" (Doan, 2009, p. 15). Freedom of contract means that all parties have right to select partners, express and negotiate to create rights and obligations among them. This issue is stated in Article 4 of the Civil Code of 2005. Freedom of contract is only prevented by prohibition by laws and social ethics. Beside, parties can create the agreements between them different from regulations of laws. Most Vietnamese jurists suppose that obeying the laws is expressed in Article 4 of the Civil Code of 2005. So the setting-up of more regulations about conforming with the law in Article 11 of the Civil Code of 2005 illegally narrows the freedom of contract. In other words, Article 4 and Article 11 of the Civil Code of 2005 partially contradict each other.

The Commercial Act of 2005 regulates two principles: the commercial practice application principle and the commercial usage application principle. These regulations may carry some characteristics of commercial law (a developed branch of law based on customary rules by traders). Commercial facts fluctuate constantly while it is hard for written laws to be updated at such a steady pace; however, daily disputes keep occurring everyday, which requires a solution. Therefore, these two principles not only play an important role in meeting the requirements of traders, but also contribute to develop the general awareness of all sources of laws.

Article 12 of the Commercial Act 2005 provides: "Unless there exist other negotiations, the parties automatically apply the commercial practices established by parties who acknowledged or should have acknowledged, provided that such practices are not contravened the provisions of laws". Article 13 of the Commercial Act of 2005 regulates:

In case there is no any regulation by laws, no any negotiation between parties and no any established commercial practice between all parties, the application of commercial usage is allowed, provided that such usage does not contradict

principles provided by in this Act and by the Civil Code.

These articles of the Commercial Act of 2005 demonstrate the priority order of sources of law below:

- (1) Written law;
- (2) Agreements between all parties;
- (3) Commercial practices;
- (4) Commercial usage.

This order differentiates from the order listed in Article 3 of the Civil Code of 2005. The difference lies in an addition of a source called commercial practice (behavioural habit). Nonetheless, both code and act consist of an issue to reconsider, that is, the consideration of the contract between parties to be a source being the inferior order to written laws.

Commercial practice and commercial usage are clearly distinguished by Vietnamese laws. The Commercial Act 2005 defines: "Practice in commercial activities is a definable behavioural norm frequently repeated and accepted by all parties in order to identify the right and eligibility in commercial contracts" (Article 3, part 3); and "Commercial usage is a widely accepted habit in commercial activities of certain local or professional communities. This usage has a concise context approved by all parties to recognize rights and obligations in the commercial activities" (Article 3, part 4). Based on definitions, the commercial practice is a wider concept than commercial usage. However, this concept is inadequate to be applied to commercial life. There is another concept supposing: for behaviour habit between parties in the contractual relationship, the proving is adequate when it is clear that before parties behaved in the same way under the same circumstance (Cuong, 2010, p. 74). Therefore, commercial practice only occurs in the relationship between certain parties of specific contractual relations. Commercial usage is a long habit of community relating to commercial activities. After the Civil Code of 2005 and the Commercial Act of 2005 were adopted, the Supreme Court's Council of Judges adopts the Resolution No. 04/2005/NQ-HDTP of September 17, 2005 considering that usages are habits formed in social life, in daily life, and in production, and must be accepted and conformed to by the community where such usages occur. This conception surmounts the shortcomings of consideration in the hierarchical relationship between commercial practice and commercial usage. However, it fails to mention the definiteness of usage rules (Cuong, 2010, p. 70).

The distinguishing commercial usages and civil usages nowadays seem to totally depend on rules in the Commercial Act of 2005 and the Civil Procedure Code of 2004, because these rules are to distinguish between the civil acts and commercial acts particularly, and furthermore to distinguish between civil law and commercial law generally. According to the Commercial Act of 2005, commercial acts consist of activities for profit including sale of goods, services providing, investing, trade promotion, and all other activities for profit (Article 3, part 1). Although this definition not only shows the scope of the concept, but also lists and analyzes specific activities carrying the commercial nature. However, it has not yet linked commercial acts with traders.

Fundamental regulations on applying commercial usages are also found in other codes and act such as: Maritime Code, Insurance Business Code, etc. In spite of this fact, the codes as well as legal documents still have a variety of paradoxes and inadequacies because a formal reasoning system of practice and usage application has not yet been created.

Having a profound legal historical legal background for the recognition and application of usages brings about a basic advantage. Moreover, there should be a formal reasoning system to ensure the establishment of a

current legal environment related to the application of commercial usages.

Conclusions

In conclusion, there is no doubt that the customary law in Vietnam is valuable legal source. It has been built up long time ago and covers many aspect of commercial life. In addition, it has also recognized a lot of feature issues and conflicts in reality. Hence, it should be very useful in the legal system. However, there is no effective direction for applying commercial customary rules in fact. Investments and business men are really confused when facing the cases relating customary law. The paper has mentioned about the Civil Code of 2005 and Commercial Act of 2005 as the key route of practicing usage law, but the guidelines for them are still required. Moreover, when Vietnamese economy has grown up very fast from the last decades up to recent time, the requirement of a formal legislation regulating customary law is very urgent.

Through the article, a general background with certain key features mentioned above is made clear. This is not all about the legal context of usage in Vietnam, but essential information in commercial area. The materials and analyses showed in previous parts should be useful source for firms, investors, students, or people who want to learn and start operating business in Vietnam. On the other hand, the paper can be considered as a research proposal. It is likely to a navigation for a future research. Specifically, the upcoming study requires some tasks needed to adapt, for example, it should focus on the solution of using commercial usage as an official legal tool, or make a synthesis of customary law in Vietnam. In near future, there should be a research in depth following the direction.

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